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Source of Community Leaders Series

Adrian A. Kragen

A LAW PROFESSOR'S CAREER: TEACHING, PRIVATE PRACTICE, AND
LEGISLATIVE REPRESENTATIVE, 1934 TO 1989

With Introductions by
Mary Ellen Leary
and
Professor Boris Bittker

Interviews Conducted by
Carole Hicke
in 1989

Underwritten by the Endowment of the Class of '31
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Introductions by Mary Ellen Leary, political writer; and Professor Boris Bittger of Yale School of Law.

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PREFACE

On the occasion of the 50th anniversary of our graduation from the University of California at Berkeley, the Class of 1931 made the decision to present its alma mater with an endowment for an oral history series to be titled "The University of California, Source of Community Leaders." The Class of 1931 Oral History Endowment provides a permanent source of funding for an ongoing series of interviews by the Regional Oral History Office of The Bancroft Library.

The commitment of the endowment is to carry out interviews with persons related to the University who have made outstanding contributions to the community, by which is meant the state or the nation, or to a particular field of endeavor. The memoirists, selected by a committee set up by the class, are to come from Cal alumni, faculty, and administrators. The men and women chosen will comprise an historic honor list in the rolls of the University.

To have the ability to make a major educational endowment is a privilege enjoyed by only a few individuals. Where a group joins together in a spirit of gratitude and admiration for their alma mater, dedicating their gift to one cause, they can affect the history of that institution greatly.

We list with pride the accomplishments of our endowment:

The Robert Gordon Sproul Oral History Project, Two Volumes, interviews with thirty-four persons who knew our late president well.

A Career in Higher Education: Mills College, 1935-1974, an interview with Mary Woods Bennett.

"Mr. Municipal Bond": Bond Investment Management, Bank of America, 1929-1971, an interview with Alan K. Browne.

University Debate Coach, Berkeley Civic Leader, and Pastor, an interview with Fred Sheridan Stripp, Jr.

A Law Professor's Career: Teaching, Private Practice, and Legislative Representative, 1934 to 1989, an interview with Adrian Kragen.

Women's News Editor: Vallejo Times-Herald, 1931-1978, an interview with Marion Devlin.

These six oral histories illustrate the strength and skills the University of California has given to its sons and daughters, and the diversity of ways that they have passed those gifts on to the wider community. We envision a lengthening list of University-inspired community leaders whose accounts, preserved in this University of California, Source of Community Leaders Series, will serve to guide students and scholars in the decades to come.

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INTRODUCTION--by Professor Boris Bittker

Now in his mid-eighties, Adrian Kragen can look back at a record of success in three separate but interrelated careers--practicing lawyer, professor of law, and educational administrator--or, if one aggregates his public services in a diversity of other areas, in four careers. Because our friendship was kindled by our common pedagogical focus on federal taxation, that is the area I will discuss; but over the years, he reminisced frequently with wit and justifiable pride about his other careers, and I also know from some of his colleagues of his dedication, skill, and achievement in those endeavors.

As a professor, first at the University of California at Berkeley, then at its sister institution across the Bay, the Hastings College of Law, and finally, in an autumnal return to Berkeley, Adrian made his reputation in the field of federal income taxation, though he taught with distinction other subjects as well, including international taxation, copyright law, state and local government, and antitrust law. He is one of the few survivors of a generation of tax pedagogues who completed their legal education before World War II but taught in the totally different tax environment of the postwar years, and he is virtually unique among that generation in having achieved notable success as a practitioner before entering academic life at the ripe age of forty-five.

I don't know whether the Boalt Hall faculty greeted Adrian's arrival (with tenure in his briefcase like a marshal's baton) with the skepticism bordering on disdain customarily exhibited by law professors toward lawyers who gravitate to academic life after several decades of private practice; nor, assuming that they were genuinely hospitable to Adrian from the outset, do I know whether their good judgement should be credited to their innate wisdom, or to the bracing breezes that from time to time dispel the fog of the Bay Area. In any event, whatever may have been Boalt Hall's atmosphere when he arrived, he soon established himself as a respected and influential member of the faculty, no mean achievement for a late bloomer. Indeed, I understand that he would have been a serious contender for the deanship on the retirement of Boalt Hall's fabled Dean Prosser, had he not refused to be considered for the post. I cannot recall any other practitioner with so long a pre-academic career who became a serious possibility for the deanship of a law school of Boalt Hall's distinction in the period since World War II.

As a teacher, Adrian quickly became a master of pedagogy, an achievement that requires me to back up before going forward. When Adrian

was in law school, teachers of taxation ordinarily served their students a mixed grill of appellate court cases related to local real property taxes, state taxes on railroad and other interstate enterprises, federal income taxes, and state and federal death taxes. The cases had little in common; if one sought to deduce an educational strategy from the classroom menu, one might have inferred that the instructor believed that taxation was a minor branch of constitutional law, that nothing could be learned from reading statutes or regulations, and that planning business transactions was either no part of a tax lawyer's role or was too crass or trivial a subject to be addressed in the classroom.

When Adrian entered academic life, almost twenty years after his graduation from law school, federal income taxation had become the principal if not the sole focus of most basic tax courses; Eisner v. Macomber (the constitutional case that instructors in the 1930s had customarily flogged in the classroom for weeks) was relegated to the periphery of attention; students were routinely exposed to lower court decisions, Treasury regulations, IRS rulings, and legislative committee reports; and the scholarly apparatus of casebooks sought to stimulate students to think about tax policy and tax planning, rather than referring them to lengthy strings of related cases and law review articles.

This shift of focus, which produced a fundamentally different way of teaching taxation, was obviously congenial to Adrian. His highly regarded casebook, written in a collaboration with his colleague John McNulty, is rich in problems, as were Adrian's classes in the basic federal income tax course. Moreover, his seminar in Business Tax Planning was conducted with problems (one a week) requiring the students, who were organized in small teams, to propose solutions to currently troublesome issues in tax practice. Taught with the collaboration of outstanding practitioners, this seminar mirrored the demands of practice: it called for research and recommendations for action based on an assessment of risks and judgments about practicalities. Although students have numerous opportunities for research in law school, they are rarely expected to formulate and rigorously defend recommendations for action, and the latter element of Adrian's seminar changed the nature of the research itself--from analysis that feeds intellectual reflection for its own sake to analysis that seeks to answer the question "What is to be done?" Although "the problem method" was employed in courses and seminars at other law schools during Adrian's years at Boalt Hall, I can attest from having viewed a fair sample of the material used at other schools that Adrian's collection--which I saw almost every year--was the outstanding product of its day. Adrian took pride in the many students who met the rigorous demands of this seminar, possibly at the expense of instructors who were more easily satisfied, and went on to success in the profession.

Adrian's uncompromising insistence that students must not be satisfied with anything less than excellence was untinged by harshness, reflecting as it did his faith and confidence in them. His relations with students, I am told, were characterized instead by sensitivity and geniality. My own encounters with Adrian are consistent with this hearsay evidence of his reputation: he was an affable host, and he adjusted readily to all personalities. Thus, having discovered that I had not the slightest interest in Berkeley's prowess on the athletic field--or indeed in any other sports, including his beloved golf--he may have winced, or perhaps expressed compassion for my shortcoming; but he then quickly found common ground for a friendship that was renewed whenever Mrs. Bittker and I turned up in the Bay area.

It is a pleasure to participate in this project to preserve the memoirs of an outstanding citizen of California and member of the national educational community.

Boris I. Bittker
Sterling Professor of Law, Emeritus
Yale University

August 1991
New Haven, Connecticut

INTRODUCTION--by Mary Ellen Leary

My first acquaintance with Adrian Kragen was from a perspective not usually thought to provide much insight. I sat behind him. It proved a fine observation post.

Legislative hearing rooms often assign the press to a row of desks facing the raised dais on which committee members sit. Persons addressing the committee stand between, facing the lawmakers, backs to the press. For three or more years it was from that press table vantage point that I came to know Adrian Kragen and to discover the careful precision of his mind, his honesty and forthrightness and his never-failing courtesy, whether he faced those in agreement with his position or opposed.

In those days (late '40s, early '50s) he was most often battling labor's representative, the AFL-CIO attorney Charles Scully, over unemployment taxes, workman's compensation, or similar issues. His position was often contrary to the pro-labor stance of the newspaper I wrote for, The San Francisco News. But it was this very bias which enhanced my appreciation of the man who spoke for the California Retailers Association and other business clients of the prestigious Los Angeles law firm, Loeb and Loeb. Whatever one's point of view it was impossible not to admire Adrian Kragen's straightforward openness in arguing his case, and friendliness however the votes went. In the purposefully obfuscating atmosphere of the state capitol, where most speakers aim to hide their real agenda under fluff and falsehood, the honesty with which Adrian stated his case stood out. Even labor bore him no ill will.

Much later this acquaintance grew into friendship. My husband, Arthur H. Sherry, and Adrian had many convergent points in their careers. Both had worked for Earl Warren and admired him. Both had served in the state attorney general's office. Both had experience arguing legislation in Sacramento. Both were invited in the early 1950s to move from active law practice to teach law at Boalt Hall. There, as colleagues, they became close friends. On retiring both in turn began teaching at Hastings College of Law, U.C. San Francisco. Adrian was an emeritus from Boalt in 1973 when he headed for Hastings, but was called back to teach at Berkeley through the 80s and into the 90s.

He, his wife Billie, Arthur and I made a frequent foursome, enjoying especially excursions to find emerging new wineries. Adrian was invariably "tour director," a role he filled with spirited imagination. It was always fun.

In the era when Adrian and Arthur joined Boalt the faculty was small enough to encourage a lively social life. Adrian had a hospitable, welcoming attitude towards new additions to the faculty. Everyone who knew him and his wonderfully warm-hearted Billie knew that the dominant passion in their lives was love of family. Pride in their son, Ken, and daughter, Robin, and their offspring glowed through their conversation. But their gift was to enlarge the scope of family to include law school faculty and, to a considerable extent, all of U.C.

Inevitably this wide embrace led the two men to transform their wine-country meandering into a special celebration for the faculty. They focused on planning as the opening social event each fall a great picnic and barbecue at some winery. It served to re-unite Boalt friendships after a summer's separation and to welcome new colleagues and introduce them to the charms of California countryside and vinaculture at grape harvest time, great chunks of beef being turned on the grill while the visitors trooped through cool cellars, learning about the art of wine-making.

Preparing for this annual event necessitated exploratory excursions ahead of time by the four of us, a most enjoyable obligation. The proper place had to be found where barbecue pits, tables, and wine-sampling were available. Eventually, as the faculty grew, the selection of suitable wineries narrowed and finally the size of the law school drove this fall event to a public park in the Bay Area, Kennedy Grove near San Pablo Dam.

This now traditional Boalt Hall event owes its origin to the bonhomie of Adrian's spirit. Adrian is never happier than when doing something to enhance the University of California. It was not enough that he served it as a nationally recognized professor of tax law, federal income tax law, and business tax planning. He consistently reached further. Active in the academic senate, he served also as vice chancellor 1960-1964.

Through the years he was and remains one of the most faithful supporters of the university's athletics, a fan of basketball as well as football. He has been a friend of coaches and players, in good seasons and in ill-starred times, never missing a gathering of Bear Backers or the San Francisco Grid Club. It isn't just that his gregarious nature enjoys the *ambiance* of a sports event. It is rather that he simply loves Cal. Give him a vacation away, and he spends it at the Lair of the Bear.

Yet along with such fidelity to the university, he found time for years of service on committees helpful to Alta Bates Hospital in Berkeley and gave guidance to the political direction of the California Retailers Association.

Adrian Kragen sees the university as the best instrument man has devised for opening opportunity to young people, wave after wave, year after year, and giving them the tools they need to handle opportunity competently. He never quit trying to make the university more serviceable.

It is therefore wholly in character that, instead of resting at last on the well-earned laurels of "emeritus," he set out, when he reached that point, to improve the life of all emeriti in their concluding link with the university. He became active on the academic senate committee on emeriti relations, seeking more recognition for retired professors and a closer link between them and the university. Appropriately, in 1991, he was made chairman of this committee.

Adrian is a practical man. He did not waste time seeking plaudits or awards for those who retired. Rather, he proposed that each campus create an office to serve them. Many emeriti feel displaced in their own schools by the flood of new arrivals, or they assume they have been given a farewell, the doors closed thereafter. Adrian felt that the retired faculty, once part of the university's pulsing life, should never be wholly severed from it.

He set out simply enough, proposing a room, table and chairs, a telephone, and if possible, a part-time secretary. He hopes there may ultimately be a place on every campus where all retired faculty could feel they were still at home in their own university. Because for him, the university is not an institution of books and buildings. It is a linkage of people. A family.

Mary Ellen Leary
Journalist

July 1991
Piedmont, California

INTERVIEW HISTORY--Adrian A. Kragen

Adrian Kragen has had a diversified career in the law, making significant contributions as teacher at Boalt Hall School of Law, as private practitioner, and as expert on tax law.

Documenting Professor Kragen's career in this oral history conducted by the Regional Oral History Office became possible when he was chosen as the fifth memoirist in the Class of 1931 oral history series. Kragen had already contributed two short oral histories to other series, but these interviews were brief and focused on other topics. They are included as appendices in this volume.

Professor Kragen's career includes his work in the Attorney General's office under Earl Warren 1940-1944, private practice as a tax lawyer with Loeb and Loeb, and his later renown as professor at Boalt Hall School of Law and Hastings College of the Law. As vice chancellor of the University of California, Berkeley, 1960-1964, he served as unofficial liaison to the Alumni Council. And in 1973 he was given the Berkeley Citation, one of the first faculty members to receive the award.

His work in the field of tax law has earned him national recognition, as well as the gratitude of his students. In fact, only a few months ago Kragen was walking through the University campus on his way to his office. Nearing Boalt Hall, he passed a group of youngsters seated on the lawn, listening to their teacher's explanations. Kragen asked smilingly if these were the lawyers of the future. As he passed, the teacher turned to his class and said, "That was Professor Kragen. He was my teacher of tax law in 1965."

For many years he represented the California Retailers Association. The tape-recorded interview sessions for this oral history took place in Professor Kragen's office at Boalt Hall on the UC campus. Crammed bookshelves line the walls, and stacks of papers indicated his continuing activities. Seven sessions were held, occurring on June 14 and 29, July 17, August 15, September 19 and 28, and October 2, 1989. Kragen was cheerily forthcoming about his work, and he spoke with great warmth and affection of his family, especially his late wife, Billie. His good humor and excellent memory helped to create a lively and accurate portrayal of his career.

Carefully reviewing the lightly edited transcript, Professor Kragen made a few corrections and added some written information, noted in the text.

Grateful thanks go to the two people who wrote introductions to this volume: Mary Ellen Leary, well-known writer and observer of the California political scene and longtime friend of Professor Kragen; and Yale School of Law Professor Boris Bittker, expert and colleague of Kragen's in the field of tax law.

The help of Regional Oral History Office members Germaine LaBerge in careful editing and Anne Apfelbaum in thorough proofreading is gratefully acknowledged.

The Regional Oral History Office is under the direction of Willa Baum, division head, and under the administrative direction of The Bancroft Library.

Carole Hicke
Interviewer-Editor

June 1991
Regional Oral History Office
University of California, Berkeley

Resume Adrian Kragen
Born San Francisco, June 3, 1907

- AB University of California, Berkeley, 1931
Phi Beta Kappa, Summa cum laude in History, Debating Manager, 1930-1931
- JD University of California, Berkeley, 1934-
California Law Review, Order of Coif.
Private Practice, San Francisco, 1934-1935
Private Practice, Oakland, California, 1935-1939
Deputy Attorney General, State of California, 1940-1944
Private Practice, Loeb & Loeb, 1944-1952 - Partner, 1945-1952
General Counsel California Retailers Association, 1946-present date
Shannon Cecil Turner Professor of Law, 1952-1973 - Emeritus, 1973-
Berkeley Citation, 1973
Professor of Law Hastings College of Law (65 club), 1974-1980 - Emeritus,
1980
On recall U.C. Berkeley (Boalt), 1980-1990
Advisory Committee California Department of Employment, 1952-1960
Chair, Chancellors Committee on Student Housing Construction
Chair, Chancellor Committee on Fraternity and Sorority economic problems
Chancellor's liaison to California Alumni Association, 1964-1966
Vice Chancellor University of California, Berkeley, 1960-1964
Various committees Academic Senate (Welfare, Emeriti Relations)
Board of Trustees, Alta Bate Hospital, Berkeley, 1961-1980 - Bates
Foundation Board, 1965-1980, President Guardian Health, 1977-1980
Chair, Taxation Committee A.A.L.S. - 1975
Chair, Continuing Education Committee - California State Bar Association
Chair, Berkeley Emeriti Association, 1987-1988
Chair-Elect Council of University of California
Emeriti Associations, 1990-1991, Chair, 1991-1992
Member - various committees involving intercollegiate Athletics at
University of California, Berkeley

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I BACKGROUND AND EARLY YEARS: 1907-1934

[Interview 1: June 14, 1989]##¹

Grandparents and Parents

Hicke: Let's just start this morning, Professor Kragen, by getting some background information on you; maybe you could tell me when and where you were born.

Kragen: I was born in San Francisco on Page Street in 1907 on June the third. Page is near Market.

Hicke: And can you tell me a little bit about your parents? Were they native San Franciscans?

Kragen: My father was a native San Franciscan. He was born out in the Mission district, I think at 20th and Dolores, and my mother was born in San Jose [California]. My grandfather had come over here to the United States in about 1848.

Hicke: Oh, from where?

Kragen: From Germany. From Hamburg. My father's father, that is.

Hicke: Why did he come over here?

¹##This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes, see end of transcript.

Kragen: To avoid conscription, I think. He came to San Francisco over the Isthmus [of Panama] by donkey. He came to San Francisco and peddled for a while--I don't know exactly what. He had been trained as a cabinet maker, so he went into the furniture business and eventually had the largest furniture factory west of Chicago, until in the nineties it burned to the ground without a dime of insurance. He couldn't redo it, so at age sixty-five he went into the insurance business. And by the time I knew him, he was a very successful insurance broker.

Hicke: He certainly was an entrepreneur, wasn't he? That's marvelous.

Kragen: I think he was eighty-seven when he died, which in those days was a really old age.

Hicke: He did very well. Did he ever tell you any stories about coming across the ocean?

Kragen: Yes. He told me stories, and I remember when I was about in the fifth or sixth grade, I wrote a long composition for class, and it's gone.

Hicke: Really? Oh, no!

Kragen: We don't know what happened to it. You know, I never thought at that time that it was important. We pieced together some things, but we really don't have a lot. My father was the oldest boy to stay home. That is, not the oldest, but he got married the latest. So he was home longer than the rest of them.

Hicke: I see. So he heard more.

Kragen: And so he got more of the family history. My grandfather built a set of flats and a house. The house was six stories high when I knew him. And until he was about 84 or 85, he had his office on the sixth floor, and he walked up and down those six floors of steps.

Hicke: Good for him. Where was this?

Kragen: In the middle of the block on 20th and Dolores in San Francisco.

He was a great old man. Every weekday (in 1915) I met him in the late afternoon, took the Fillmore Street cable car down, and he met me at the end of that and took me through the Panama Pacific Exposition. Building by building. For five days a week I used to get out of school a little early and meet him around two or two-thirty, and we would go through, building by building.

Hicke: What do you remember from that?

Kragen: I was eight years old then, and I remember just vaguely some of the exhibits, but I don't remember them very much.

Hicke: Sure.

Kragen: But I remember his meeting me. I remember the times we had together, but I don't remember as much of the buildings.

Hicke: You started to talk about stories about your grandfather. Do you remember any?

Kragen: Not a lot. I mean, he was a family man. My poor aunts; three of them lived with him, one maiden aunt and two married aunts, and another aunt lived next door in the flats. But, as far as I could see, they had to cook all week to get ready for the Friday night gathering of the family. And you had to have a good excuse if you didn't show up. And the religious holidays; we were Jewish, and for the religious holidays you had to be there. There was basically no excuse. I've got a picture at home of Samuel's (my grandfather's) eightieth birthday party with the whole family in the house.

Hicke: That's wonderful. Sounds like you had a fairly big clan around.

Kragen: Let's see, there were three girls, I guess, and five boys. One boy ran away, and they never heard of him again. But the rest all stayed around here.

Hicke: This is in your father's family?

Kragen: My father's family. In my mother's family, I don't know when exactly when my grandfather came over. I never knew him; he died before I was born. But my grandmother lived with us--my mother's mother.

Hicke: What was her name?

Kragen: Her name was Pearl Hables. She was a very strong woman. My grandfather came over first and started a little tannery. I think that was the first thing he did. That was his business. She came over, and she had a baby a few months old and a boy two years old. In Chicago, when they were changing trains, the boy ran away and went under a train and was killed. So she came with a coffin and a baby.

I'm not sure how old my grandfather was when he died. I think he was in his forties. He died very, very young, leaving my grandmother with two boys and three girls, I guess, and property all over the state, all mortgaged to the hilt.

He had a tannery, and he also owned a race track. He owned three square miles in East San Jose, which was mortgaged. Of all the property he owned, the only one my grandmother got anything out of was two hundred dollars for signing a quitclaim to the square block of La Brea and Sunset in Los Angeles.

Hicke: Two hundred dollars?

Kragen: That was a quitclaim, because there was a two-thousand-dollar street assessment, and she had no money to pay it. Nobody went and looked at the property anyhow. He had property in San Rafael, property in San Jose, property in Los Angeles; because he went around buying horses for the tannery all over the state.

He traveled, and he was very shrewd in terms of buying, but not so shrewd about betting on his own horses. Then he had a long illness. And between the two, that left my grandmother with a bunch of kids and no money.

Hicke: I wonder how much that property is worth now?

Kragen: Oh, hundreds of millions. The San Jose property alone is worth hundreds of millions of dollars.

Hicke: I was just thinking of the Sunset and La Brea.

Kragen: Yes, Sunset and La Brea must be a fifty-million-dollar piece of property. But it doesn't matter. We all existed.

Before the fire, before I was born, my grandmother came to live with my mother and father in San Francisco. The children were all grown by that time. She lived with us until she died.

Hicke: Did she have a strong influence on you, do you think?

Kragen: Well, she spoiled me pretty badly.

Hicke: Good. That's what grandmothers are for.

Kragen: I think she may have had a negative influence, in the sense that I was taken with her to visit all the family. She had a big family, sisters and brothers, and I was taken to visit. My mother would have something she had to do, and my grandmother would take me. I used to hate it. I think I lost a sense of family because of it. I don't like large family gatherings, and on both sides we were a large family.

Hicke: Were these sisters and brothers of your grandmother, did you say?

Kragen: Yes.

Hicke: So they came over. Where did they come from?

Kragen: All from Austria. It was then Austria-Hungary, I guess. I don't know what it would be now. I think it would be Czechoslovakia now probably.

Hicke: Do you know the name of the town or the area?

Kragen: No. It was a small town near Krakow.

Hicke: Tell me about your parents, then.

Kragen: Well, my father was comparatively uneducated. He went through the eighth grade and then quit school and went to work for his father in the furniture factory, and eventually he became a salesman.

He was the unmarried one--well, there was one other unmarried boy; I had an uncle who my grandfather thought was learning the cabinet-making trade in the East, who instead was playing as a catcher for the Washington club in the big leagues.

My father was the go-between for the two, because my father played baseball also. My grandfather thought it would be disgraceful to have done anything like that.

My mother had gone through high school, and then a business school of typing and that sort of thing. She worked until they got married. My father was thirty-two when they got married. My mother, I think, was twenty-one.

Hicke: She worked in an office somewhere?

Kragen: Yes, and I don't know the office. My father was then working for his father. Right next to where the Emporium is now, there was the S. Kragen Furniture Company, which was a retail store. My grandfather sold that to a man named Bean whom I never knew, and my father went to work for him.

Hicke: When was this?

Kragen: This was before the fire--before 1906. Because I remember my father and mother telling us that when the earthquake started, he went down and got the big wagon and horses from wherever they were kept, and then went around picking up all the family and bringing them down to the Ferry Building and put them on the boat to Oakland. Nobody's house was destroyed or even hurt, I think, very badly.

My uncle, my mother's eldest brother, was walking by the City Hall when it collapsed, and he was crushed, but not terribly badly injured by the bricks that fell.

Hicke: My word!

Kragen: My father sent them all to Oakland and then kept worrying about the business. The Market Street store was not hurt. There may have been property damage inside, but I didn't hear about that.

Then my father got out of that business and went to work as a manufacturer's agent, as they called him, representing furniture people and carpet people, until about, let's see, 1915, I guess. Maybe a little later. I'm not quite sure.

He and my uncle bought a garage at Twelfth and Geary Streets in San Francisco. My father ran that for quite a number of years, until his brother sold his interest to a fellow who was a crook. As a result, my father got sort of

pushed out of the business, lost it, and opened up a little liquor store on Clement Street in San Francisco. He ran that until he died.

My mother worked in it, and when I was in school over here, and then when I started to practice law, I used to go over on weekends and help out, because my father was not very well. The day of my wedding, after we had left, late in the evening, he had a heart attack. For eight or ten years afterwards he was hospitalized two or three weeks or more every year with heart attacks. Finally, one killed him.

So my mother had to take a lot of the burden. My wife and I tried to help her. We came over and helped at the store on weekends when I could. She kept it for a year or two after he died and then sold it.

Childhood and Education

Hicke: Tell me a little bit about your childhood.

Kragen: As I said, I was born on Page Street. We moved when I was about a year and a half old to 119 - 15th Avenue, which is between Lake and California Streets on 15th. A very small house, which was one of the few houses there. That street was fairly well built up--most of the houses were built after the one we were in--but from there on to the beach it was largely sand dunes. It gradually was built up, but there were comparatively few houses when I was a very small child.

So I grew up there until I was about fifteen. We moved just one block, to 271 - 15th Avenue, and I went to grammar school at Sutro, which was at 12th, between California and Clement. It has now, I think, been destroyed.

When I started high school, I went first to--it was a serious mistake--Lick Wilmerding, which was basically a vocational high school. You had to get in by special consideration. It was a public school but had some sort of deal where you had to have a special consideration. You couldn't walk in as you could other high schools.

I stayed there. I was and am very inept with anything to do with my hands. One of the courses you had to take to

graduate was free-hand drawing. I took it three times and never passed it. I was not a great student because I was not interested in it. I was interested in athletics. I was a very poor athlete, but I was very interested in it.

Hicke: How did you happen into this high school?

Kragen: I was good in grammar school, and the principal recommended me.

Hicke: Oh, I see--thinking it was a good deal?

Kragen: Yes. My parents thought so, because my father could make anything and do anything. He didn't have much time, he had to work so hard, but he could do anything. He was a gardener, he was a cabinet maker, he was anything around the house. They never had anybody come in to fix anything. But he never taught me anything. I don't know what I could have learned, but he never taught me. They thought it was the highest-rated school in the area at that time, so they thought it would be good. And it was really far away; it was out in the Potrero district, and we were living on 15th Avenue. I had to take two streetcars to get there every morning.

Then, of course, I fooled around. I quit there after a year and a half, and I finally ended up at Lowell [High School], after a few days in a couple of other schools.

Hicke: How did you get into Lowell?

Kragen: Lowell was easy. In those days you just had to be a resident. It wasn't the prized school that it has become in recent years. It was a good school, I think. I wouldn't know, because I never did any work in the school. None. I was interested in athletics, and I never opened a book unless it was absolutely necessary.

[telephone interruption]

Hicke: I know you are interested in sports, and that's why I'm asking about all this.

Kragen: I was like third-string football and track and that type of thing. I was a better runner than anything, but I went out for everything, and I didn't do anything else. I quit school as soon as my eligibility was over; I never graduated. And I

had no grades. I think the highest grade I had in Lowell was a "C."

Hicke: How do you explain this?

Kragen: Well, I was not very mature, I guess, from that standpoint. And I tell kids that when sometimes the question comes up.

Early Work Experiences

Kragen: The provocation for quitting school was that a man named Gensler, of Gensler-Lee Jewelry, was a friend of my father, and he was related to one of my father's sisters-in-law. He told my father that he thought I ought to go to work for him, there was a great future in the jewelry business. My father asked me if I wanted to, and I said quickly, "Sure!"

So I quit school and went to work as an order clerk. I always say that I had four brooms under me. Everybody else was above me. [laughs] I worked there for about two years, and then I quit. I had a lot of disagreements with the manager of the store, of whom I later became a good friend. I went to work for an outfit called Winchester-Simmons Hardware, which was a combination of Winchester Repeating Arms of New Haven [Connecticut] and Simmons Hardware of St. Louis [Missouri], both of which were in financial trouble and had been taken over by the banks, which ran them as banks run businesses of that type--terribly.

We had a branch out at Third and Townsend in San Francisco in which they did less business with ten salesmen than Winchester had done with one salesman operating out of St. Louis.

Hicke: Poor management?

Kragen: Yes. We had all sorts of problems. I went to work for them as an order clerk. I was seventeen, I guess.

Hicke: That was 1924?

Kragen: It may have been 1925. Because they had such stupid people working for them, in six months I was the foreman. I had forty people working under me.

Hicke: That's quite an advance from four brooms.

Kragen: That's right. I think I was making \$175 a month, which was a lot of money in those days. I saved a lot of it to go to school later. I stayed there for two years. Then they changed management, I had a big fight with the new people, and I quit.

I went to work for another hardware outfit, called Dunham-Carrigan-Hayden. That one's bankrupt now. The building is still there. For a very short time I was registrar of orders, and then I was assistant office manager.

Hicke: Where was that located?

Kragen: That was located south of Market. You see it from the freeway. As you're coming from the airport and you get down into central San Francisco, there's a big red building on the right side, which is used for warehouse offices and that type of thing. It was at about Brannan and Ninth or Tenth. I'm not sure of the exact streets.

College Preparation and Attendance

Kragen: I had a young fellow working under me, whose name I don't remember except that I remember we called him Dutch. We brought bag lunches every day. I had been working there about a year or a year and a half, and when we went to lunch one day, he said, "You know, this is a dead end, Adrian; we ought to go to college." I said, "Go to college? I never graduated from high school. How can I go to college?" He said, "Neither did I, but I found we could go to one of the two prep schools in San Francisco, either Bates or Drew's, for two or three years and get into college that way."

I was tired of working, so I went to check it out. I found that he was right. In two, or at the worst in three years I could get into college. I quit, and Dutch stayed and took my job; he didn't quit. [laughter] I went to Bates. Bates was a rich kids' school, and nobody worked hard. Except I did. I was using my own money--money I had saved from working. I worked really hard. I took three years of

Spanish in one year; I took two years of math in one year. In one year I got twenty-one units of recommended grades, and I got into Cal [University of California, Berkeley]. I had the highest grades they'd ever had in the school.

Hicke: How do you explain this turnaround?

Kragen: I don't know. I just don't know. I'd been working hard and was used to it; I was a good worker in the various businesses I'd been in. And I liked it. I loved college when I got here. My family and everybody were sure that one semester in college and I'd flunk out. Well, I didn't.

Hicke: Did you read books, or did somebody influence you?

Kragen: No, I don't think there was an influence. I don't think there was a soul. Nobody had ever talked to me about college, except that I had an uncle once, when I was still in high school, who said something about financing me if I went to college. Because nobody in the family had ever gone to college.

Hicke: And they didn't expect you to?

Kragen: No. And, when I finally decided to go, they didn't expect me to last very long.

Hicke: Did they care if you dropped out of high school?

Kragen: No, I don't really think so. In fact, my father encouraged me; he thought I was better off, working in a job that they thought would pan out to my being a manager of a jewelry store or something, and he was probably right. No, there was nobody in the family--and I didn't know anything about college, really. I really didn't. I knew there was such a thing. I'd gone over to see a football game a few times, and things like that, but I don't remember now that I knew any college graduates. I may have met some in my various jobs, but I had no relationship with anybody who was going to college.

No, that's wrong. I think about the time I started at Bates, I joined the DeMolay [Club]. In that particular setup there was a group of people who were going to go to college, and two or three who were college freshmen. That was about the same time as I went to prep school. I know it wasn't

before that. I met those people, and they became good friends. But that was my only relationship to college.

Hicke: How long were you at Bates?

Kragen: One year--in fact, less. They gave me final examinations ahead of time so I could go to work. I had a job for the summer at Winchester-Simmons. My old boss had come back, and he asked me to work during the summer. So it was a good job for the summer, and I wanted to go to work. They gave me the exams early, and I was about eleven months at Bates.

Hicke: It was nice to have that flexibility before the bureaucratic standard set in.

Kragen: That's right [laughs]. Oh, you couldn't do it now. I could never get into [University of California] Berkeley now. I might after a long period, but I couldn't get in that way.

Hicke: Did you apply for Cal right after you took your exams?

Kragen: Yes, I applied to Cal and got in.

Hicke: What did you think you were going to do?

Kragen: I thought I was going to go to what was then called the College of Commerce, although I liked history. I started reading history, and so I became a history major. But I thought I would go back into business afterwards. I started taking econ[omics] courses and other courses.

I think maybe the reason I became a history major--even though I liked it--was that one of my friends whom I met at DeMolay, George Moncharsh, was reading History 145 and 146 with Frank Palm. Franklin Palm was the professor. That was the highest-paid reading job on the campus. George took me in to meet Palm when I was a freshman, and Palm said to me--because I'd come in with a straight-A record from Bates; that's all they really saw--that when I completed the upper division history requirements, including his course, he would make me one of the readers (there were two readers) in his course.

I fooled them. In my second year, my sophomore year, I took all the upper division history requirements. I took twenty-two units a semester, and I got straight A's. I went in in my junior year to Palm, and so I was the reader. A

fellow named Bob Bridges, whom you may have heard of--a lawyer and a big donor to the University--was the other reader.

Hicke: So that's why you decided to major in history?

Kragen: Yes. I think it had something to do with the fact that I wanted this reading job. I hadn't run completely out of money, but I had very little left. I was working; I was doing all sorts of odd jobs. Anything that came up, I'd do. This was a real bonanza.

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Hicke: Were you still living at home?

Kragen: I lived at home the first semester and commuted. It was a terrific commute. I took a streetcar down to the Ferry Building, the ferry across, a train to Shattuck and Alcatraz, and a streetcar to the campus. As I remember now, it didn't bother me at all [laughs]. Then I moved over here and moved in with a man named Sam Jacobs, who was a year ahead of me. I lived with him, and a whole group of people that I knew lived over here. We lived where Eshleman [Hall] now is--well, not quite; it was behind. It was Union Street; there was a street between where Zellerbach [Hall] and the Student Union are, and there was this lodging house. Behind the lodging house was a little house where Bernie [Bernard] Witkin, Al Weinberger, Stan Hall, and Hank [Henry] Robinson lived. Any time of the day or night you could go down there and find an argument going on about something. I tell Bernie now that I learned all about argument from him.

Hicke: Was he in law school?

Kragen: He was in law school then. That was in the spring of 1928. He was just graduating; that was his last year, I guess.

Hicke: What were some of these discussions about?

Kragen: Oh, anything. Any subject that came up--world politics, the University, philosophy. They talked about everything--any subject there was.

In my sophomore year I had asked one my close friends, George Moncharsh, who was reading Palm's course, "I've got twenty units fixed. Is there an easy two-unit course? I'd

like to take twenty-two units." That would give me certain flexibility in my junior and senior years that I wanted. He and someone else said, "Yes, Juris 10 A, B. A fellow named Lynch from Oakland gives it. It's an absolute cinch." So I signed up for Juris 10 A. I got in, and Mr. Lynch was not giving the course. A young law graduate, who had just come back for his first teaching job, Roger John Traynor, was doing it. [laughs] It was not easy. But it was Blackstone, and I thought the course was so great that I decided to become a lawyer.

Hicke: This was when you were a sophomore?

Kragen: Yes. So from then on I was going to be a lawyer. I didn't take as many business courses as I would have otherwise taken; I should have taken more, probably.

Hicke: Was this course jurisprudence?

Kragen: Yes, Jurisprudence 10 A, B. It was in the political science department. We still do some of that; we still give some undergraduate courses. Of course the Jurisprudence and Social Policy program does, but our other people give some undergraduate courses of various types. But this was Traynor's first year of teaching. He'd practiced about six months or maybe a little longer and come back to the law school. He was teaching a course in the law school and this undergraduate course.

Hicke: What was so inspiring about him?

Kragen: Just everything--the way he did it. He loved the law so much that he made you feel that way. I just thought it was wonderful. I became sort of a disciple of his, and he was my father confessor from then on. Whenever I did anything, I talked to him about it. He was young--about twenty-seven or -eight years old then.

Hicke: I want to hear much more about him, but let's just finish up with the University here. You went on with your major in history?

Kragen: Yes, and I graduated summa cum laude, and I was Phi Beta Kappa. I did the things that nobody thought I would do. And I don't know how I did them.

Hicke: That's really amazing, without a lot of support from your family.

Kragen: After I started and proved that I could do it, my family was as supportive as they could be. But they had no experience. I know that my father, for a year or so, sent me twenty-five dollars a month, which he couldn't afford. He could not afford it. I didn't know that. So they were very supportive. But they had no experience; they didn't know anything about college.

I remember that between the first and second year I was working that summer at Southern Pacific [Railroad]. My cousin had gotten me a job. Oh, and it was a terrific job. [laughs] All you did was sort out bolts that the track walkers had picked up and put them in different bins. It took no intelligence at all, but it paid well. I remember my mother calling me there and saying, "A letter has come from the University. Shall I open it?" And we all thought that maybe I had flunked out. It was an award of a Kraft scholarship, which was given to the top 5 percent in the freshman class, which was exciting and unexpected. I think they still give that award; I don't know. It was only fifty dollars, or something like that, but it was a very exciting experience.

I told my children (without success) that if you really worked hard your first two years and got really high grades-- and I got a C in Spanish, because in those days if you had had three years of Spanish they put you in fourth year Spanish. I'd had three years of Spanish in one year, and I could not compete at all. That was the only C I got in the University. Otherwise, I may have had all A's, or maybe one B in the first two years. So I had very high grades, and I got a scholarship in my third year, as well as the teaching job. So I was really living.

I had met the girl who eventually became my wife in my sophomore year, as a blind date.

Hicke: Oh, what was her name?

Kragen: Her name was [Velvyl] Billie Bercovich. I took out one of her sorority sisters a few times, and she asked me if I'd go to their dance and have a blind date with this girl. I said okay, not very enthusiastic. We went out from then on, and got married while I was in law school.

Hicke: What kind of history did you major in?

Kragen: Modern European. I was one of Palm's boys, and he was a modern Europeanist. But you took everything. You took medieval and ancient history, American history. We had a very good history department in those days--Bolton, Schaeffer, Priestley, Palm, Kerner. There was a whole group of very good history people. It was a very badly split department. It had feuds--the Kerner and the Palm factions.

I'll never forget, because I was debate manager and was active around campus in various things. When Palm appointed Bridges, who was also active, and me as readers, Kerner got on him at the meeting--this is what I was told--for appointing campus politicians instead of students. Then when I made Phi Beta Kappa and came in and told Palm, he went right down to the history department office and told the faculty--there was a history meeting that day. [laughter] He was always very friendly to me from then on.

Hicke: Was the feud about historical concepts?

Kragen: It was a scholarship feud. Kerner fancied himself--and he was--a really top-flight scholar, and he didn't feel that Palm was. The people with the Palm faction, he felt, weren't the erudite people that the Kerner faction was. It was a badly split department, as some other departments, as you know, have been over the years.

Hicke: Yes, nothing new about that, I think.

Kragen: As far as I was concerned, it was a great setup.

Life as an Undergraduate

Kragen: I went through the usual things in school. I was very interested in athletics. I went out briefly for track and then realized it was useless. So I quit and concentrated on debating and other things.

Hicke: Tell me something about those activities.

Kragen: I was mainly a debater, and then I became debating manager, which for a while was a paying job. The year I took it, they

cut out the pay. [laughs] There was a debating commissioner. Garff Wilson was the debating commissioner when I was debating manager. I set up, did all the program for the debates. We filled the old Harmon Gym for debates in those days. We had people from Oxford [University] here, and three thousand people was not unusual for a debate.

Hicke: What would you debate?

Kragen: Oh, they'd debate any current subject. I can't remember any of the subjects, but it was after World War I. So they debated--not the League of Nations, but another outfit. All sorts of things; anything that came up.

Hicke: So politics, economics?

Kragen: Yes, sure. We went all over. We debated mostly around here. I remember every year we went out to St. Mary's and had a debate out there, and they came to our place. Father Leo always had a dinner for us out there.

Hicke: Who else was on the debating team?

Kragen: Well, Garff, a fellow named George Ackley, Maury Harband, a woman who became famous as a Communist, Oleta O'Connor. She became famous as Oleta O'Connor Yates; a Supreme Court case involves her. I think Sid Rudy, who was a year behind us, was on it for part of the time. I can't remember who else was on the thing. Every once in a while I get out the Blue and Gold for the year I was debating manager, and it had my picture in a tux and with lots of hair. [laughs] I show it to my grandchildren, and I ask them, "Do you know who this is?"

Hicke: How did you get interested in debating?

Kragen: I was interested in debating when I was at Lowell. I was interested in athletics, but I was also interested in--I always talked a lot. Pat [Edmund G., Sr.] Brown was a year ahead of me, and he was on the debating team. His brother, Harold, was in my class, and I got to know him. That's when I first got to know Pat. I just got interested, and it was something to do when I got here. It was before Jerry Marsh was the debating coach, but I think a fellow named Gulick was the debating coach. It was sort of fun. And when you got to be debating manager, that was a little involvement with politics, too. It was interesting.

Hicke: Did you say the Browns were with you in your high school class?

Kragen: Yes. Pat was a year ahead of me. They didn't go to Cal. Bernice, Mrs. Brown, went to Cal, but not Pat. I think he went to night school. He may have gone to St. Ignatius [now USF].

Hicke: What else did you do besides debating?

Kragen: I didn't do very much else. I followed every athletic team. I didn't run for office, other than for debating manager. I never got into politics as such. I didn't have that much time. I had to work; I usually had two or three jobs. The Campus Theater was there then, and I was the janitor. I changed the marquee twice a week, and at eleven o'clock every night I came and swept the place out. Then I worked in the zoo[logy] lab, washing all the utensils. I had all sorts of odd jobs; any job that came up, I took. And there wasn't very much pay in them, I'll tell you--thirty-five cents an hour or so.

But things were cheap. You know, in 1930, when International House opened, I moved into it. I had a single room with daily maid service for twenty dollars a month. We ate three meals a day for twenty dollars a month, also. So for forty dollars a month, you had everything. I had money because of History 145-146. Each reader got a dollar a student, and we had 550 students, I remember, one semester. So I made \$550 a semester, and then I had a Hellman scholarship, which paid about \$500 or so.

Hicke: Was that I. W. Hellman, of Wells Fargo Bank?

Kragen: Yes.

Hicke: Was that scholarship based on grades?

Kragen: Performance and, I guess, need. Because I think when it was awarded I didn't have the reading job.

Hicke: Can you tell me a little more about living in International House?

Kragen: I was not yet in law school, but they let some law students and some undergraduates move in, because they couldn't fill

the place with foreign students and regular graduate students. We really just took advantage of the place. We didn't really participate in the foreign student activities to any extent, although we were around. I knew Allen Blaisdell pretty well, and his assistant, Armand Faraday, was a law student.

But we sort of stuck together. I was on the fourth floor on the south side, which was a short floor. That only had about maybe twelve or fourteen rooms; I can't remember exactly, but it was a small floor. There was a football player there, Ted Beckett; and my roommate, whom I'd been living with, Sam Jacobs, moved up; and a fellow named Bud Blue; and another law student named Henry Gross. Then we had an [East] Indian on the floor, whose name I don't remember, and a couple of others. Anyway, it wasn't one of the large floors that they have.

Hicke: Was the food okay?

Kragen: The food, as far as I can remember, was fine. There was a lot of food, and you could eat all you wanted. It was a buffet thing. It was fine with us. It was very good. I stayed there until I got married.

Law School: First Hastings, then Boalt Hall

Hicke: You graduated in '31?

Kragen: Yes, and then I went to law school.

Hicke: You had already decided you were going to law school.

Kragen: Yes. I worked during the summer, and then came to law school.

Hicke: What were the requirements for getting into law school?

Kragen: That you had a C average, and you graduated from Berkeley-- or maybe any other [university]. I graduated with about a 3.7 or 3.8 [grade point average]. One of my classmates, Howard Hazard, was a very good track man. He's a lawyer in San Francisco now. He had just a C average and he got in.

He was a good student; he became law review and then a fine lawyer. But that's all you needed. There were no LSATs.

I did not come here, though, my first year of law school. I could have gotten in, but I went to Hastings [College of the Law] because I had a chance at a law job serving papers and filing and so forth in a law office in San Francisco. I asked Roger what I should do, and he said, "Oh, take the job." I needed the money. He said Hastings was a good school, but I hated it. I didn't think it was a good school. It had all part-time professors. I did quite well; I was second in my class over there. But I hated it. Another reason I hated it was that my girlfriend was over here in school. She was graduating, but she was living over here in Piedmont. I just didn't like it.

Hicke: What firm were you working for?

Kragen: I was working for a cousin of mine, Bert Kragen, who was a lawyer, and L. S. Hamm. It was Hamm and Kragen. There were two other people in the firm, a man named Moser and somebody else, but it was just a small firm. I did service of papers and I did filing and I did a little research for them. It was good experience.

Then I had a very funny experience. I decided before the second semester was over that I was not going to stay at Hastings if I could help it. So when my grades came--I think I had one B and the rest A's--I came over and talked to Roger Traynor. I asked if I could transfer over. Things weren't as formalized as they are now, and he said, "Sure, go up and see the dean." So I went up and saw the dean, who was himself a Hastings graduate, Orrin Kip McMurray. I told him what I wanted and gave him my transcript of my grades and my undergraduate grades which showed that I could have gotten in with no problem. He looked at me and said, "We don't take Hastings transfers." I looked at him, and I left the room.

I came, practically crying, to Roger and told him the story. He said, "Wait a minute. Sit down." He got Barbara Armstrong, and the two of them went up and talked to the dean. I don't know what they said, but he came back and said, "Go up and talk to Mrs. Lawrence. You'll be admitted." So that's what I did. She was the dean's secretary.

Hicke: You don't know what went on?

Kragen: I don't know what went on; I have no idea. But I know that Barbara was very, very vehement in everything she did, and she and Roger just talked to him. So I came here and finished my last two years here. I was law review here.

Courses and Professors

Hicke: So you were in your second year of law school when you came here. What did you take?

Kragen: Those courses you were required to take. I took trusts, negotiable instruments, and constitutional law. Let's see, in the second year I think I also took Roman law and code procedure. In the third year I took taxation, evidence labor law, and persons (family law).

Hicke: Who taught these courses?

Kragen: We had--and I don't think we appreciated it--one of the great faculties in the country. I took corporation [law] in the summer after I got married. We had Roger Traynor; Henry Winthrop Ballentyne, who taught torts and corporations; we had George Costigan, Pat [James Patterson] McBaine, Dudley McGovney, McMurray, Max Radin, Barbara Armstrong, Pete Haynes. It was a small faculty, about seven or eight. When I came back to teach and went to law school meetings, the old-timers would ask you where you went to law school. I'd tell them, and when, and they'd say, "Oh, that was a great faculty; that was one of the great faculties."

But we were a provincial school. We only had one person in our class from out of state. But they had accumulated a great faculty.

Hicke: Captain [Alexander M.] Kidd?

Kragen: Captain Kidd was one of my close friends, but not a great teacher. He was an awfully nice guy, and very interested in students, although he'd never tell us that. In class, he'd berate us. He'd say, "You're nothing but a bunch of ribbon clerks. Why'd you ever come to law school?" [laughter] I remember one time he got so mad that he threw the books at one fellow--who ended up the last in our class; he wasn't very good--and stalked out of the class.

But I learned from him. My first year here, when I got a class that wasn't prepared properly, I just walked out. From then on, the class was great. I learned a lot from Captain Kidd. [laughs] But he was not a great teacher, compared to the others.

Hicke: Was this something of an act?

Kragen: Oh, yes. I think he decided this was effective.

Hicke: What about Professor McBaine?

Kragen: Professor McBaine was a courtly gentleman who was a wonderful teacher. I took evidence from him and something else; I took two courses from Pat. He was a very good teacher. Oh, [William] Warren Ferrier was here, too; I forgot about him. He taught property and estates and trusts. Barbara Armstrong taught persons, and I took labor law and persons from her.

Hicke: Persons?

Kragen: That's what we now call family law. It was community property and--

Hicke: Tell me about her.

Kragen: She was a wonderful teacher and a wonderful person. She became one of my very close friends. She was very--I wouldn't say dramatic; that's not quite right. She was very demanding in her classes, and she really worked you very hard. She wanted perfection. But she was a very good teacher. I know that in labor law we had a sort of divided class--a group of conservatives and liberals. We got into some terrible arguments on the labor law. The unions were just really going then, starting to come back. She appointed me sergeant-at-arms to keep the two warring factions apart [laughter], just to see that they didn't get out of line.

Hicke: Was there any consideration of the fact that she was the only woman?

Kragen: No, we never paid any attention to that. We had another woman teaching a course in legal bibliography. The librarian was Rosamund Parma, and she taught the course. And we had an unusual number of women in our class. I don't remember what they started with, but we graduated six women, I think, out

of sixty-nine graduates. Most of the classes had less, although Boalt had in that period more women graduates than other major law schools.

Hicke: Who were they?

Kragen: One was Cecile Mosbacher, who became a judge. She is dead now. Juliet Lowenthal, who was then Juliet Blumenfeld, is practicing in San Francisco still. Elvira Wollitz, who is now Elvira Smith, I don't think is practicing any more. She's in Oakland. There was a woman, Evelyn St. John--I haven't seen her for fifty years or more--who practiced in Los Angeles. We lost track of her. Whenever we've had reunions we've never been able to contact her.

Hicke: That's quite a remarkable record.

Kragen: One married a lawyer and went down to San Mateo. I don't remember her name. Then there was a woman who died fairly recently who lived in Riverside and went into practice with her father there, Mary McFarlane.

Hicke: Did they ever say anything about the fact that they were women in this area of men?

Kragen: I don't think they paid any attention.

Hicke: They didn't have a hard time getting jobs?

Kragen: Yes, I think they had a hard time getting jobs. But all of us had a hard time getting jobs! Here I was, I think seventh in my class, and I went around trying to get a job. I finally got a job with a family friend who took pity on me.

Hicke: Before we get to that, let's do a little bit more on Boalt [Hall]. There are some other professors that we haven't talked about--George Costigan.

Kragen: George Costigan was really a fine professor, regarded as one of the top people. I only took trusts from him, but he also taught another first-year course that I didn't take; But he was caustic. I remember one experience with him. It was a subject that we thought in his book was terribly confusing, and we didn't really understand it. Knowing his tongue, when he said, "Any questions on the bank cases?" nobody raised their hand. We didn't say a thing, because none of us understood it enough. He said,

"Okay, no questions, so let's go on to the next subject." That was seventy-five pages. We went up to him afterwards and tried to explain, and he wouldn't listen. He said, "Sorry, you should have asked questions. I gave you your opportunity." Then he gave a question on it in the exam. He paraded around the hall during the exam, and if you came out he'd ask you, "How'd you like the bank question?" [laughs] I didn't like him, but he was regarded by some people as the best teacher in the school. I didn't think so.

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Kragen: Of course, I was so Traynor-prone that I thought Traynor was the best teacher anyway. But I thought that Dudley McGovney was a much better teacher, McBaine was a better teacher. I was not thrilled with Costigan. But the man I regard as the best lawyer I've ever known thought Costigan was his best teacher.

Hicke: Was that Roger Traynor?

Kragen: No, that was Herman Selvin. Roger was a great judge and a great professor. He never really practiced law, in the sense of arguing cases, so I don't consider him in the same category as I do Selvin.

Hicke: You met Selvin when you went to Loeb & Loeb?

Kragen: Yes. But I had heard of him before, after I graduated, from Chief Justice [Phil] Gibson. That was while I was deputy attorney general.

Hicke: Let's put that story off until later. Tell me a little bit more about Dudley McGovney.

Kragen: He was just a brilliant teacher. I thought he conveyed everything very well, and his questions were good, and he was a good sport. I enjoyed his courses. I thought he was a very good teacher. He was a wonderful person. He was very friendly. I was not here when he retired, but the senior class or all the students (I'm not sure which) gave him a lifetime pass to what was then the Oaks baseball team, the Pacific Coast league team.

I used to see him. I was assistant ticket manager at the ASUC [Associated Students of the University of California] for football and basketball. He, McBaine, and Ferrier always came up to every football game. Most of the

law faculty was very interested in sports, though not all of them. So I used to see them there.

Hicke: What more is there to say about Professor Ferrier?

Kragen: Ferrier was an adequate teacher, a wonderful person--a lovely, lovely man. Not an inspiring teacher to me, but a very adequate teacher. I took wills from him, I think. You learned your subject matter, in contrast to Radin, who I thought was a wonderful scholar, but he'd go off on tangents at the slightest hint. I took bankruptcy from Radin, and I think at the second or third session somebody asked him the derivation of the word "bankruptcy," and for three weeks we were on derivation of words! I didn't learn any bankruptcy in his course; I learned a lot of other things, but not that.

He was so funny. The offices in the old Boalt were so terrible. This [office we are in] would have been two offices, anyway. Radin had a very small office, and it was packed. My office is clean compared to his. It was packed high. But if you came in to talk to him about a subject, he'd say, "Yes, I think there's an article on that subject. I think I have a copy of it." And he'd pull it out of the middle of [one of the stacks]. [laughs] He was great. His problem was that he was a scholar, but he had all sorts of interests in everything and he sprayed his knowledge, rather than concentrate.

Hicke: You got some liberal education there.

Kragen: Oh, you did. I took Roman law from him and bankruptcy. They were fun courses to take, but I didn't learn a lot on the subject matter.

Hicke: Henry Winthrop Ballentyne?

Kragen: Henry Winthrop Ballentyne was a very courtly gentleman. He was the expert in corporations; that was his main field. He was very, very precise, much like [Richard W.] Jennings, who took a course from him and worked with him a lot. They are very precise, very meticulous. Everything is done just so. And that's the way Ballentyne was. He never raised his voice, and you never saw him angry, as far as I was concerned. He just went along and did his job.

I took corporations in summer session--came back from my honeymoon to take it--because I had to do so much outside work. By that time I was running tutoring seminars. I was running a whole group of people who gave seminars for undergraduate examinations.

Hicke: This was after you graduated from Boalt?

Kragen: No. I bought out Fred Peters, a law student, when he graduated. It must have been in '32 or '33. I'd been doing the history seminars for him--History 145 and 146. It was a big class; you did it only for big classes, because you did it for the midterms and finals, and we charged, I think, two dollars for either one. We got big crowds! But you did big classes for that purpose. Most of them we held down in the basement of what was then called the College Women's Club across the street here, next to that little restaurant.

So I bought Peters out, and my girlfriend (a year later my wife) did all the clerical work. It didn't bother her to do all this tedious stuff. She did all that, and I ran the thing--got the people, did the scheduling, and so on. I was able to make enough money to get married on. We gave things like geology (a fellow named [Norman] Hinds was the geology professor), history, the big English courses, Econ 1A, Poly Sci 1A--all the big, big courses. And we did very well.

Hicke: You didn't do all of them yourself?

Kragen: I just did History 145 and 146. Fred Peters, whom I bought out, still continued to do geology, which was a big, profitable seminar. I had a woman named Miriam Goldeen giving English, and a law graduate named Jack Chance doing political science. I had people who had been readers, usually, or section leaders or something, who were very good students. You made good money, and I got expenses plus a share of whatever we took in.

Hicke: Did you do this one year?

Kragen: No, I did that until 1939. It was the only way I could manage, because I practiced law and made little money. I sold it in '40, when I went with Earl Warren.

Roger Traynor

Hicke: I want to hear a little bit more about your relationship with Roger Traynor.

Kragen: Because I had taken this undergraduate course in my sophomore year and was so impressed by him, I kept in touch with him. He had an office in the basement of the law school (in what is now Durant Hall) and I'd go down and see him when I had a question about taking courses or anything. So I kept in touch with him a lot.

He was a bachelor then, and he was living with Jack Chance. When I took over the seminars, Jack Chance was one of my instructors. I used to see a lot of Roger then by going over and talking to Jack about what we were doing. I kept in touch with him until I came to law school. I went to him for advice as to whether I should go to Boalt or Hastings, and then as to whether I'd get in.

Then I took his course, and I'd come down and talk to him all the time about courses and my subject matter and the cases we were interested in. Then I took his course in taxation. When I graduated, I came back and audited one course that he hadn't given. He was back in Washington as a consultant to the treasury, and he hadn't given a course in tax that I wanted to take. Then I worked with him a little bit. He sort of watched out for me, in a sense.

He got me a job in Sacramento, which I finally decided not to take. But then he got me the job with Earl Warren, and was instrumental in my going to Los Angeles later, also.

Until I came to law school, I could come and ask him, and he was always friendly and very helpful. He was interested in athletics; he went to the football games, so I used to see him there and talk to him a little bit about the game and our team. The law faculty were very interested in athletics generally in those days.

Hicke: Tell me what it was about him that impressed you.

Kragen: Well, he just was so good. He was able to take a subject and make it live--something like Blackstone's study of law.¹ He just made it live. He made it so you got really interested in it. He was very enthusiastic. He was very tough, very demanding. There were only nine of us in the tax class, because tax wasn't an important subject to people then. He was very demanding on everything he did, but he made it so you felt the law was a living thing.

Hicke: Why was he interested in tax law?

Kragen: I'm not sure. He had a lot of economic background, and I think it was just the subject that interested him. Also, I think it was an opportunity. I'm not absolutely certain, but I think he thought that nobody else was interested in teaching it. They regarded it as sort of a slough. He was the first one who taught it. We had a summer session with a professor from Harvard. That was the only time we ever had a tax course here; he gave it one summer. Roger was the first tax professor at Cal. So I think it was, in one sense, an opportunity. Here he was, competing with the Costigans and the others who had long reputations; they'd all been deans somewhere, usually. He had to make a reputation. He taught trusts and equity, but they were fields that were already covered by Costigan and others. I think that was it. I never talked to him about it, but I think it probably was.

Hicke: I think taxes were becoming increasingly important, too.

Kragen: Yes. They were starting to become important. The first case book, the one I studied with, was about that [an inch and a half] size, and it was about half constitutional law, because there were constitutional cases on taxation. Now you get individual tax--well, look, this is volumes I and II of the law. That's just the law! Then we've got four volumes of regulations. Then nobody understands it, either. [laughs]

Hicke: So he was on the cutting edge.

Kragen: He became a consultant to the state government and the federal government. The younger people don't realize that when he went on the [California] Supreme Court, he was

¹Sir William Blackstone, Commentaries on the Laws of England, ed. by William Carey Jones (Baton Rouge, Louisiana: Claitors's Publishing Division, 1976).

probably the leading academic figure in taxation in the country. He never really did much on the court in taxation; we didn't have many cases. But he was the leading figure. He was regarded as the top person in the country.

Hicke: So maybe some expertise went to waste there? But he taught a lot of people.

Kragen: Yes, he taught a lot of people. And he was so good in everything that he got into other fields and made really important laws.

There's a funny story that doesn't fit this period about Roger and how human he was. When I was in Los Angeles, I came up to go to a football game--USC [University of Southern California]. Roger and Madeleine always said, "Look, you can park in our driveway if you come up." So I went over and parked in their driveway. They lived on Piedmont Avenue; Mrs. Traynor still lives there. Roger was working in the yard. I had an extra ticket for some reason. I think maybe Herman had decided he couldn't come up with me. Herman Selvin was my partner then. I said to Roger, "How about going to the game with me? I've got a ticket here." Roger said, "I haven't any interest in football any more." Madeleine came out and said, "Roger, you've been working in the yard all day. You go with Adrian." So he went with me.

It was a USC-Cal game, which was a terribly exciting game. All of a sudden I'm being hit on the shoulders, and it's Roger Traynor! Then in the last few minutes of the game, Herb Brunk ran ninety-eight yards, or some such figure, for a touchdown. Who was there and pulled my hat down over my head? This guy who wasn't interested! [laughter]

Hicke: Do you have any idea when that was?

Kragen: Well, it must have been about '47 or '48.

Hicke: When you were at Loeb & Loeb?

Kragen: Yes. He was a very humane person, and just very, very smart. He could take a subject like tax and make it--I wanted to practice tax law; I couldn't right away, but I wanted to.

Hicke: That's a real gift.

Kragen: Oh, yes. He was very, very good.

Law School Activities

Hicke: Should we mention anybody else at Boalt Hall while you were there as a student?

Kragen: I was very friendly with the faculty and the people in my class. We were a small class. My problem was that I had to work so much that I couldn't stay around. I had the seminars, and I was the assistant ticket manager. The seminars took an awful lot of time, all the work--but they paid off. And my last year in law school I was married. I had also come into the school a year late. So I was friendly with my fellow students, but I became closer to some of them after we graduated from school.

Hicke: Anything much in the way of social activities?

Kragen: No. We had a group of people whom we had known while I was an undergraduate, and that's the group we went out to parties and things with. Two of them had graduated ahead of me--two of them weren't in law. There were about five or six of us, and we had parties and went out together and did things. Then I had a group that I had met subsequently in Oakland. No, I hadn't met any of those people when I was in law school. Our group was the one I had known when I came into college. We went out a little.

And, you know, you didn't have any money for very much social activity. I remember Big Game night, when it was at Stanford [University], and after the game we went to the Del Monte Hotel overnight. It was seven dollars a person, and that included dinner dancing and breakfast. Our social life was all going to people's homes. There was nothing that cost very much money. It was in the middle of the Depression. I was doing all right, but I didn't have any excess.

After I got married, we rented an apartment on Piedmont Avenue, just below (south of) Dwight. I remember we paid \$47.50 for the apartment, and that was about half of my total income.

Hicke: Did you see anything more of Bernie Witkin?

Kragen: Not a lot, until I went over to San Francisco. Bernie was around, but I was three years younger than Bernie, and I was never a close friend. I'm closer to Bernie in recent years

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UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW
198 McALLISTER STREET
SAN FRANCISCO, CALIFORNIA 94102

Dear Adrian:

This birthday greeting on the 4th of June, 1977, celebrates not merely a festive day, but all the years of a long friendship. A few highlights from those years may speak volumes of the times we have lived through.

There were bright days even in the Depression decade, when I was lucky enough to be a young instructor with some surpassingly bright students. Among them was one Adrian A. Kragen, destined to be regarded as the one and only Adrian.

You walked into my class in Jurisprudence 10, liked what you heard about the law, and have since been reputed to say that I started you on the path to Boalt Hall. Whether truth or legend, I'll happily take the credit.

When you enrolled in my pioneer class in taxation, a course rough enough to deter all but the boldest, you took on all problems not only with scholarly interest but also with heartwarming enthusiasm. When the then Attorney-General, later Chief Justice, Earl Warren, asked me to recommend a deputy for taxation, I recommended A. A. Kragen as a Triple-A candidate. Thereafter, I followed with pride your career in the Attorney-General's office and later in private practice. In the course of those years my base shifted from Berkeley to San Francisco, and yours from San Francisco to Los Angeles, but we managed reunions nonetheless, and always they were happy ones.

A few more years passed, and once again I had occasion to take pride in a new chapter in your career. When you came back to Boalt Hall as a professor of taxation and, as all your friends had hoped, decided to live happily ever after in Berkeley, you and Billie made your home a meeting place for friends, old and new, from far and wide.

When eventually you were also drafted for the heavy responsibilities of a university vice-chancellor, and you lived through the transformation of a once peaceful university town into a storm center, your home exemplified how much a friendly and compassionate outlook on the world can alleviate its burdens.

Each stage in life may bring unexpected rewards. As you once again embark on new adventures, Madeleine joins with me in affectionate good wishes to you and Billie and your children and grandchildren.

As always,


Roger J. Traynor

Professor Adrian A. Kragen
1141 Arlington Avenue
E. C. California, 94530

than I ever was then. We knew each other, and later, after I was a lawyer, we went to parties together. And we were in the same building in San Francisco for four years.

Hicke: Doing what?

Kragen: He was with the court, and I was with the attorney general. I'd see him then, and we'd go to things. Some of my friends were good friends of his, but he went with an older group. Occasionally we were at the same party, and we went to lunch together once in a while in San Francisco.

Hicke: Did the Depression affect people in law school quite a bit?

Kragen: Nobody had much money. We had a couple of boys, the Moncharsh's, one who was in law school, whose parents owned a big egg-producing outfit called Nye & Nissen in Petaluma. They had an allowance; they had money. And their parents, who didn't live in this area--they lived in New York--had an apartment in San Francisco, which the kids used on weekends. We went over there for parties and things. They were the only ones who had any money. The rest of us lived on very close budgets.

Everything was so cheap. I remember one Friday night--my budget ended on Friday--we had ten cents left on the budget, so we bought a pound of hamburger and a bunch of carrots, and that was dinner. And we had a cent left over, I think. When we had our first child, we moved around the corner to a flat--\$37.50. I looked at it in 1952, when it was vacant--I was desperate to find a place before I moved back up here--and they wanted two hundred and something then. What they want now for it, I couldn't guess. It's still there.

Hicke: Is there anything else about your student days at Boalt Hall?

Kragen: I was on law review. That was very much different than it is now. It was a small group; I think they took in ten from each class, so the maximum you had was twenty on the law review. In my memory, nobody turned it down. Today people turn it down. Today they've got ninety or a hundred on the law review editorial staff, and they've got five or six journals. But nobody [in my day] turned it down; it was the big prestige thing in the law school. We worked very hard.

Hicke: I don't know how you had time for it.

Kragen: You just did. You worked, that's all. You were used to it. Everybody worked hard, and there was much more faculty supervision. For example, the first note I wrote was on workmen's compensation. Barbara Armstrong taught that area, so I had to get approval from Barbara before my note would be published. I rewrote it, I think, three times. It wouldn't be published until she said okay. Now, I don't remember the last time they asked me to look at an article for the law review, or for any of the other journals. Once in a while something comes up, and a particular editor might be more interested in having the faculty participate.

But it was a close-knit group, the law review group. They are the ones I've been really close to in my class.

Hicke: Who were they?

Kragen: The editor was Maurice Harband, who practices in San Francisco. Juliet Blumenfeld, who is now Juliet Lowenthal, and Maury [Morris] Lowenthal (he's dead now, but he was her husband); Ev (Everett) Brown; Tom McCarthy; [I can't think of his first name] McHenry, who has been dead many years; Howard Hazard. How many does that make?

Hicke: Seven.

Kragen: There were three others. One was Cecile Mosbacher.

Hicke: I was wondering which ones you remembered best.

Kragen: Well, those are the ones I've seen. Ev Brown died and McHenry died. McHenry died very early, and Ev Brown was practicing in Oakland. Oh, Tom McCarthy was on there, and Cameron Wolfe.

Hicke: The bankruptcy judge?

Kragen: Yes. Tom McCarthy was president of Kaiser Aluminum [& Chemical Corporation], and he's now retired and living in Carmel or Monterey. Howard Hazard is the head of a firm in San Francisco. Maurice Harband always practiced on his own, and so did the Lowenthals.

Law review was a faculty-student production. I mean, you really used the faculty, in contrast to today.

There was Prohibition, and Emeryville was open. People went down to Emeryville for the beer joints. I never did. I went once, I think. Partly because I had no money, and partly because I was going out with my wife, and we spent more time together. I had my group of people, and we had our little parties at home. So I wasn't close to a larger portion of the other poor people in the class. But the law review people got together on things.

Hicke: Do you know when this supervision of the law review began to change?

Kragen: No. All I know is that by the time I came back here in '52, there was no longer any supervision.

Hicke: It happened sometime in the forties, I guess. And you don't have any idea why?

Kragen: No. It may have been the faculty. It took a lot of time for the faculty, and it may have been that the faculty didn't press. Maybe the students just decided that they weren't going to bother with the faculty very much. When I was on law review, Roger Traynor was the faculty advisor. The whole basic issue had to be approved by him, plus the approval of individual articles. We spent a lot of time with Roger, talking over what we were going to do.

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Hicke: Anything else in your student days?

Kragen: It was a busy time, and we worked. The Depression, of course, overshadowed a lot of things, because you had to work so hard to get a job and do anything. In contrast to the present day, when they have all these interviews and all these opportunities and all this money, nobody ever came over here to interview anybody. And on my first job, nobody on the faculty, even Roger--though Roger later helped me a lot--suggested [anything].

II EARLY WORK EXPERIENCES: 1934-1953

Arnold Lackenbach

Kragen: Ev Brown went to work for Pillsbury [Madison & Sutro], I think. Some people went to work for their parents, like Mary McFarlane went down to Riverside with her father, and Maurice Harband went with his father. But other than that, everybody scuffled. None of us had any jobs before the bar results came out, except for a couple. McHenry went up to Sacramento with the Legislative Council (it was then called something else). But, really, law review people, who now get all the offers they'll accept--practically none of us got offers. It was a different time.

When I finally got a job with [Arnold] Lackenbach, it was fifty dollars a month that he offered to pay me. The first three months he didn't pay me anything. He was away, and his secretary came in and said, "Mr. Lackenbach called and said he had forgotten to pay you." She gave me three fifty-dollar bills. I had never seen a fifty-dollar bill in my life. It was the only money I ever got; I worked for him eight more months, and I never got a dime.

Hicke: How did you happen to get the job there in the first place?

Kragen: Family. I went to law offices, and I went to the attorney general, whom I knew: U. S. Webb. He was a friend of my father. I went to various other people, and nobody wanted to hire. Everybody else was having the same problem. Finally, Lackenbach was a friend of the family. It was a bad situation in many ways. Arnold Lackenbach was a fine lawyer and a nice person, but a gambler. And he lost.

Finally, I quit. It wasn't because he wasn't paying me, because I was working on other jobs: I had my seminars, and I was assistant ticket manager still. I was doing other things to make a living and getting lots of good experience with him. But I found out he was using his clients' money. So I just got disillusioned with the law, the whole thing. I just quit. The day I found out, I went home and talked to my wife, and I talked to my father-in-law. The next day I went in and told him I was going to go to work for my father-in-law.

Early in my career I had a wonderful experience. We had a case, Robbins v. American Trust, which in those days was a big, big case.¹ It was a case involving the transfer of securities of American Trust to Goldman, Sachs. The question was the validity of the transfer, because it was before the Depression, and during the Depression everything went downhill. People would like to get back their American Trust stock rather than their Goldman, Sachs stock. So that was what the lawsuit was about.

I drafted a lot of answers to motions to dismiss by the lawyers, to dismiss a lot of the individuals who were named in the case--officers of American Trust and in Goldman, Sachs. I drafted all that stuff and had done all the research. When I came in the morning it was to be heard in court, I was hoping that Lackenbach would take me with him so I could listen to the argument. I came in, and Lackenbach was there. He said, "The Robbins case arguments are on this morning. I want you to go out and handle them." I had just been admitted two weeks before, and I had sat in on things, but this was the first thing I did. But he didn't want to face his creditors. That was his problem, but I didn't realize it.

So I went out. Against me were Garret McEnerney, the old man. He was representing some of the individuals and Goldman, Sachs, I think. John Francis Neylan, Maurice Harrison, and Bart Crum were the lawyers on the other side. They argued their motions for Judge Julian Goodell. I got up to argue, to answer their arguments, and I said about four words when old man McEnerney--who knew everything about me, because his nephew, young Garret, had been in my class and was sitting in the courtroom; we had just met two weeks before--got up and said, "Your honor, Mr. Kragen is new at the

¹Robbins v. American Trust Company, 8 Cal.Rptr. 2d 241 (1937).

bar of this court. He's new to this case." He got those words out, and Goodell, whom I loved thereafter, said, "Mr. McEnerney, Mr. Kragen may be new to the bar of this court, I don't know. He's new to this case, because I haven't seen him. But he's a member of the bar of this court, and entitled to the same courtesy as you. Sit down until he's through." [laughter] It's just one of many experiences that I've never forgotten.

I argued, and we won some and lost some. We lost the case, eventually, altogether, but I was out of the office by the time that was decided.

Hicke: That was a formidable array of talent.

Kragen: Oh, yes. I mean, old man McEnerney was the dean of the California bar, and Maurice Harrison and John Francis Neylan were tops in the bar. Bart Crum was a partner in Brobeck, Phleger & Harrison (as it was then), and was regarded as one of the top-flight lawyers. But it was a great experience.

I learned a lot in that office. Because he didn't want to face creditors, I did a lot of things that no young lawyer ever does--not in those days, anyway. Now, I think some of them do. I moved around and sat in on a lot of cases, did a lot of arguments and did research.

Hicke: Can you think of any other examples?

Kragen: No. I was with him when he tried cases, and he was, as I say, a very good lawyer, but unfortunately a very bad gambler.

Hicke: Whatever became of him?

Kragen: He fled the state to avoid being prosecuted for using a client's money. Because he was so well known, was so popular, and had so many good friends, they persuaded the district attorney to drop the criminal proceedings. He got disbarred. He went East, and I heard things about him. One day, maybe five to eight years later, I got a telegram. He said, "I realize I owe you \$2,000." He didn't owe me \$2,000; he hadn't paid me for eight months at \$50 a month. He said, "But I've got a thing that I need \$500 for, and that will bring me in the money and I will pay you your \$2,000 if you just send me \$500." Of course, I never acknowledged it.

He had a wonderful wife, two or three kids. It was just terrible. And it disillusioned me so that I didn't want anything to do with the law for a period. I went to work for my father-in-law.

A Cameo Appearance as Oakland Businessman

[Interview 2: June 29, 1989]##

Hicke: We left off last time when you had decided to work with your father-in-law in Oakland.

Kragen: When I left Lackenbach. Well, I was just so disillusioned with the law because of what had happened in that office. And my father-in-law had nobody and wanted somebody in the family to take over the business. I was really the only one that he felt could do it.

Hicke: His name was Harry Bercovich?

Kragen: Yes. That's a very funny story, that name, because some member of his family--I think it was his grandfather--came over from the old country. He was on the ship and met a Pole who'd been over here before. As they neared Ellis Island, the Pole said, "You'd better anglicize your name." He asked what he should do, and the Pole asked him what his name was. He said, "It's Baer." The Pole said, "Bercovich, then." [laughter] That's how the Bercovich name got to be. It's a big clan around here. There were people in the furniture business; it was quite a large family in the East Bay.

Hicke: What was his business?

Kragen: His business was wholesale tobacco and candy and all that type of thing. He had a fairly large wholesale business centered at 11th and Clay Streets in Oakland.

Hicke: What did you do for him?

Kragen: I learned the business. I did everything: I went around with the salesmen, I sat down with the buyers buying candy and new lines, buying tobacco, I visited with the cigar manufacturers. My father-in-law was funny. He sold cigars and cigarettes, but he didn't believe that a woman should smoke. A woman who smoked was sort of a fallen woman.

Hicke: He was missing out on a lot of sales.

Kragen: As far as he was concerned, if no woman ever bought a cigarette, he would be happy. But I worked with him. He was a very fine man in every respect, but very, very demanding. Everything had to be exactly right. If a letter came back from his secretary, and the line for the signature was a little too high, as far as he was concerned, then the letter had to go back--no matter what the letter was! He had a very good operation. His men swore by him, because he treated them well. But they did everything the way he said. He was very circumspect in every way. It was a good experience. I did it for eleven months.

After about eight months I decided I just wanted to go back into the law somewhere. I don't remember whether we discussed how I came out here and talked to Roger Traynor to see about getting a teaching degree, an S.J.D.

Hicke: No, we haven't talked about that.

Kragen: I came out and talked to Roger to see if I could work with him doing my dissertation and everything. It was fine, so I went up to see the dean, because I had to be admitted. The dean then was Ned [Edwin] Dickinson; he hadn't been the dean when I was in school. I went and talked to him, and he said, "How are you going to support yourself?" I said I had a deal with my father-in-law where I could work half-time there. I guess by that time I either had a child or had a child on the way, and I said I thought I could support them under that setup.

"Oh," he said, "we can't allow you to enroll here and work." I said, "Look, I have to make a living, and Professor Traynor said it was all right with him." He said, "No, no, I can't admit you. Anyway, if you want to get an S.J.D., why don't you go to a good school?" I got so damned mad at him that I left, and I didn't want to go, I was so annoyed. I told Roger, and he said he couldn't do anything, that it was up to the dean.

Hicke: What did he mean by going to a "good" school?

Kragen: Michigan or Pennsylvania, or some school that he knew about; he was from the East. I got to know him after I came up here to teach and he was retired. He had left here and gone back to Pennsylvania, I think it was, and then retired. Then he

came out here to live. I got to know him, and he was a very nice guy. But at the time, I hated his guts, I'll tell you. [laughs]

Hicke: He apparently wasn't happy out here.

Kragen: No, he wasn't. It was obvious. He didn't think much of this school. It was a provincial school. We had a very good faculty, but we really didn't have a broad spectrum of students. He was used to the Eastern schools.

General Practice in Oakland, 1936-1939

Kragen: Then I decided I'd see about opening an office. My cousin, Bert Kragen, who practiced in San Francisco, had an association with an attorney in Oakland, Lionel Benas. First I talked to my cousin, and then I talked to Lionel. Lionel offered to rent me space in his office, and also give me secretarial and telephone and everything in return for some work I'd do for him. So I rented office space and paid fifteen dollars a month for space in the Latham Square Building. I handled subrogation cases for Fireman's Fund for Benas, and I did a lot of brief writing for other lawyers and eventually built up a fair practice. I went there around '36 and stayed until the end of '39, when I went with Earl Warren.

Hicke: What was the first thing you did when you sat down at your desk? Did you start working on these Fireman's Fund cases?

Kragen: I can't absolutely remember, but the first thing I had--I represented my father-in-law, and there were some things I did for him. Then he got me the representation of the East Bay Association of Wholesale Tobacco Dealers. So I had those, and I started picking up things from friends. I got a divorce case from a friend whose daughter, I think it was in that case, was getting divorced. I represented people who used to work with my father; they'd call me if they had a little problem. And I picked up a personal injury case here and there.

I only had four divorce cases. When I had the fourth one it was so miserable, as far as I was concerned, that I remember coming home to my wife the night after we finished it, and I said, "Billie, we're going to get awfully hungry

before I take another divorce case." And except as I had the tax end of divorce cases in the Loeb office, I never had anything to do with divorce cases after that. That was 1937 or so.

Hicke: I've heard that sometimes in those days a lawyer would represent both sides on a divorce case, sort of as a mediator.

Kragen: There may have been some of that. I never did that. The case that got me so annoyed with divorce cases was one where my client, the wife, and the husband both were guilty of extreme cruelty to each other, and the judge refused to give either of them a divorce under the law as it then read. And the judge was right.

Hicke: One party had to be at fault?

Kragen: Yes. It was then; it's no longer that way and hasn't been for many years. But that was the law.

The representation of both parties I think was more common in things like partnership cases, or ventures where people were going together in one way or another, which is a very tricky area where you have to be awfully careful. Lawyers get themselves into real problems representing, for example, all the partners in a partnership that's being formed. The question is, how do you handle the differences? Unless everybody is just putting in cash and have an equal share, and that's all, there are a lot of problems. Lawyers do it, but I think it's very tricky.

Hicke: Do they still do it?

Kragen: Yes. Oh, sure. Two people come in, and the lawyer may have represented them both individually in ventures. They come in and say they want to form a partnership and they want him to handle it. Well, the problem is that there are all sorts of inequalities that can creep up between the partners in the formation of a partnership, and you have to properly inform them. Then one gets mad because you told the other one that he was getting too good a deal, or something. So you're much better off if you can say, "Look, I'll represent one, and we ought to get somebody else to represent the other party." Unless it's a straight cash deal or something.

Hicke: Because negotiations are required?

Kragen: Yes, there are a lot of things. I mean, if one is putting in property and the other is putting in cash, there are a lot of problems. A lot of lawyers ignore them. I don't know how many do it now, but I know they did. One of the things I used to do in class, when I was teaching partnership in the tax field, was emphasize that problem--the ethics problem.

Hicke: What about personal injury cases?

Kragen: I had a few personal injury cases. In the early years, they were probably the best fees I got.

Hicke: Was that contingency?

Kragen: Yes, all contingency fees. I think I only tried one of them; I settled most of them. I didn't have a lot of them.

Hicke: Can you give me examples?

Kragen: Well, I had a boy, a young man, who was run down on a bicycle; he was hit by a car. He broke his leg and something else. We settled it, and I think we got \$10,000, which I think was a lot of money in 1936 or '37. I got 25 percent. I had a few cases like that.

I did quite a lot of brief writing for other lawyers. I'd do the research and I'd write the brief. In the first place, a lot of them didn't like that tedious research, the trial lawyers especially. Secondly, it was something for which I was equipped; I'd done a lot of research. In the Latham Square Building there were a number of lawyers who hired me. I can't even remember their names. I used to do briefs for them in cases on appeal, and they paid me fairly well.

I still had my seminar group--my tutoring group out here--and I still was the assistant ticket manager for ASUC. So between everything, we ate.

Hicke: Did you enjoy that work?

Kragen: Oh, yes, I enjoyed it. I've enjoyed everything in the law, I think. Well, I never did any criminal cases. The closest I came to criminal law was when I represented an uncle of mine who was in the business of claw machines that pick up merchandise, and pinball machines. I did a lot of work for him, and through him the association of these organizations asked me to handle a sales tax matter--I was starting to do a

little tax work--which I was able to handle successfully for them.

Then the sheriff, I think it was, picked up a bunch of machines owned by ten or twelve of them. They had a lawyer whom they'd used, but they didn't like him. The first case that was tried, he handled. But they wanted me to handle the rest of the cases. I said I didn't know anything about criminal law. They said, "Look, we'll pay you just to sit in and listen to the cases pending, and then you can learn how it's done and see what you want to do." Well, I sat in and listened for the two days this case went on. I think they paid me \$50 a day. Before the case was finished--I think it went three or four days--at the end of the second day, I got my people together and told them they were going to lose this case. "This client's going to get a fine and maybe a jail sentence. I talked to the assistant D. A., and you can enter a plea. You'll get a small fine and they'll confiscate your machines. I think it's the best deal." They agreed, and that's the closest I ever came to criminal law.

Hicke: Well, that was a 100 percent success record!

Kragen: Except that they were stuck. I never did like criminal law. In fact, even criminal tax fraud cases I never handled. When they came into the Loeb office, we sent them elsewhere. When I came back up here I knew some people who were involved with a tax fraud case, and I sent them to an office in Oakland. I wouldn't do anything on it. I didn't like it, and I didn't know anything about it

Hicke: What else did you do?

Kragen: I did all sorts of things. I was coming out here and auditing a course of Roger's, and doing a little work with him. In 1937 I had lunch one day with Lionel Benas and one of his clients who was a merchant. We started talking about the Agricultural Adjustment Act--the processing act--and this client said that he had thought that they could get a refund under the Agricultural Adjustment Act, but that their regular tax lawyers had told them no, they couldn't. He thought they were wrong, but there wasn't much he could do. He wondered if I wanted to look at it and take it on a contingent basis. I said fine. And I got them a refund.

Then people started giving me a little bit of tax work. Gradually I was doing a little more tax work during the next two years. My practice had gotten pretty good then; I was

able to support us on my practice by that time. I represented a number of individuals and merchants and things of that sort, mostly on commercial stuff. I didn't do a lot of trial work by that time. Then in '39, Warren got elected attorney general.

Hicke: Before we get into that, I have a couple more questions. Did you take other tax cases on a contingency basis?

Kragen: No, that was the only tax case I took on contingency basis, but I got into doing mostly tax advice, not cases. I had a number of state sales tax problems, and a couple of franchise tax [matters], but mostly people coming in for tax advice. It was maybe 20 percent of my practice.

Hicke: These were business taxes?

Kragen: Yes, business-type people. And I had a couple of sales tax matters. It was at the most 20 percent of my practice. But I was interested in doing more, and I was spending more time with Traynor talking about it. He had talked to me about going to Sacramento with either the Board of Equalization or the Franchise Tax [Board], but I decided I didn't want to. He kept looking out for things that might interest me.

Alameda County Bar Association

Hicke: Did you belong to the Bar Association?

Kragen: Oh, yes, the Alameda County Bar. It was a very nice bar association. You had to belong to the California [State] Bar [Association]; you had no choice. But I also belonged to the Alameda County Bar, and I went fairly regularly to their meetings. It was a fairly small bar, comparatively, and a very friendly bar. You could really trust everybody. And you knew everybody, except for the people who were practicing out in Hayward and the outlying areas. The bar wasn't that big.

Hicke: Do you remember any of the people that you knew there?

Kragen: Oh, yes, sure. I knew Ed Heafey, Ed Rosston--

Hicke: Is he with Heller, Ehrman [White & McAuliff] now?

Kragen: No, he's dead now. And Jess Nichols, who was the big personal injury lawyer over here; Charlie Beardsley; Ezra Decoto, who was sort of the dean of the bar. He'd been the district attorney, and I guess when I first came to Oakland he was still district attorney; then Warren became district attorney. I'm not sure whether Ezra had retired from that job by that time.

Oh, I knew a lot of people. Cameron Wolfe, who was my classmate, was practicing in Oakland; Everett Brown was practicing in Oakland, but he died in a very few years. At the present, there are very few people left who were around in those days.

Hicke: Did you find that a valuable experience?

Kragen: Oh, yes. I learned a lot. You see, on this Fireman's Fund stuff I was in court three or four days a week. For the first two years, I think, I handled those. I mean, they were little cases; they were fender benders, you know, and they were subrogated cases. Fireman's Fund paid, and it was subrogated to the insured's claim. And they went after them. In those days, in the Depression years, if you had a claim for \$150, \$250, or \$500, it was worth going after it. I handled those in return for getting free secretarial and library and telephones.

Hicke: Which court were they in?

Kragen: Mostly in municipal court. In Berkeley, Oliver Young's, and down in Oakland I can't remember who it was.

Hicke: Was there any excitement?

Kragen: No, they weren't very exciting cases. They were somebody who hit somebody; they were pretty open-and-shut cases, most of them, I felt. And you won most of them. The supervising adjustor said, "The only thing I can tell you is, don't come back here if you lose a rear-end collision case." But most of the cases we won. A lot of them you couldn't collect on anyway.

We had a case where I won a judgment. It was a fairly large judgement--maybe \$1,500--against a woman, and they couldn't find her. She didn't respond. I didn't have anything to do with the collection of the judgment, but all of a sudden I got a note from the insurance that they had found her. She was working as a prostitute in Fresno, and

they thought I should go down. I told them that wasn't my job. [laughs]

Hicke: Did he reimburse you at so much per hour? How did you figure that out?

Kragen: He had a retainer from Fireman's Fund, and I had nothing to do with that. Except for expenses, I did not get anything.

Hicke: But how did you and he work out balancing the secretarial help?

Kragen: We just did it. I felt it was very satisfactory, because I was spending, basically, \$15 a month in those early days. I did it for around the first eighteen months, I guess maybe it was. Then my own practice got to be enough so that I was too busy. And it was very good experience. I was trying little cases, but I was trying cases.

Hicke: Was he an older lawyer?

Kragen: He's still living; he lives out at Rossmoor, as a matter of fact. He is maybe four or five years older than I am.

Hicke: That was a pretty nice arrangement.

Kragen: Oh, it was a great arrangement.

Hicke: And just on a handshake basis.

Kragen: Oh, yes. He was a very nice man. He was a very compassionate sort of lawyer; he worried about his clients. He was very successful. Never a big-time lawyer; I don't remember any really big cases he had. But he was financially successful, lived well. He just retired a year or two ago. When he moved out to Rossmoor, he opened an office in Walnut Creek and handled some work out there for some years. In fact, I gave a talk to the Lion's Club, and he had asked me to give it. He was the chairman of the day for that talk. It was the only time I've seen him out at Rossmoor, but he's there. His wife died and he remarried.

Hicke: I suppose that sort of handshake thing would not ever be possible now.

Kragen: Well, I'll tell you, that was true of most of the bar. If you wanted a stipulation, you'd call somebody and say, "Can I get a continuance?" or this or that, and they'd say yes. And

you never worried about it. One or two lawyers everybody knew you had to get things in writing from, but better than 98 percent of the bar, you just did it on the telephone, or you saw them on the street or something. The San Francisco Bar [Bar Association of San Francisco] was not like that, but the Alameda County bar was a small enough bar that there was a lot of peer pressure. If you didn't act properly, you'd be in trouble.

Except for one lawyer I remember because of problems we had, I never got anything in writing or that type of thing. Today you do it all; you never would take a chance. I remember when I went to Los Angeles, we never did anything without getting it in writing.

Hicke: I wonder when that changed?

Kragen: Well, as the bar got bigger.

Hicke: In the sixties?

Kragen: Fifties, even. When I came back here I either rejoined or was still a member of the Alameda County Bar (I dropped it so many years ago), and I went to a few of their meetings. It was just much bigger, and as it gets bigger it's harder to do things like that. You don't know the people. We knew everybody by first name--certainly everybody who was practicing in the type of law, civil law, that I was practicing. I knew the criminal lawyers, too, but not as well. There was a certain small group of criminal lawyers who were quite good.

Hicke: Did you get referrals from other lawyers?

Kragen: I got some. Mostly stuff from other lawyers was in relation to briefs and things of that sort.

Hicke: Did you ever have to refer things to other lawyers? You said criminal cases--

Kragen: Criminal cases I did. I didn't have many come up. I think that was the only thing I'd ever refer in those days.

III TAX DEPARTMENT UNDER ATTORNEY GENERAL EARL WARREN, 1940-1944

Recruitment by Roger Traynor

Hicke: Let's go back, then, to Roger Traynor. He was looking around for things for you.

Kragen: I was one of his boys, you know. He placed a lot of people in state government over the years.

Hicke: Why was he so interested in state government?

Kragen: He drafted the use tax, and he was the consultant to the state government on the franchise tax, the personal income tax, and the sales tax. Dixwell Pierce, who was the secretary of the Board of Equalization, was a Boalt graduate he had placed up there. Frank Keesling he had placed in the Franchise Tax; Valentine Brookes he'd placed in there. He had placed a number of people.

Then when Warren was elected, one of the first things he did was appoint Traynor as special deputy attorney general.

Hicke: Did Traynor and/or you have any part in the campaign?

Kragen: No. I can't say whether Traynor did; I don't know. I doubt it. But Warren knew him from here; Warren was a Boalt graduate.

So he appointed him as special deputy, and the first thing he told him to do was to find a couple of people for the

tax department. Valentine Brookes and I were the ones that Traynor found.

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Hicke: Do you remember when Traynor talked to you about it?

Kragen: Yes. It was toward the end of 1939.

Hicke: Do you remember the occasion?

Kragen: Not as such. In those days I lived on Parker Street in Berkeley. We had a child by that time; my son had been born. I was at the school quite a bit. Or he may have called me. I don't remember. But I remember he told me that Warren wanted some people in the tax department, and that he had recommended me. And I got a call from Warren's office to come over and see him, which I did.

He said, "I understand you'd like to work in the tax department of the attorney general's office," and I said, "Yes, I would." He said okay. [laughs] Basically, that was it. No, he said more. He said, "Do you think you can do a good job?" I said I thought so, and he said, "Okay. Start to work." I had to make some arrangements with my practice that took a couple of months.

Hicke: Yes, what did you do about that?

Kragen: The things that were pending I transferred to various people, some to my cousin. There were a couple of clients I had in San Francisco, and I transferred them to my cousin. The other clients that were around I transferred to Lionel Benas. That was it.

Hicke: Why did you decide to make this change?

Kragen: I thought it was an opportunity to specialize in tax, which I wanted to do, and I didn't think I could do on my own. It would have taken a long time. Tax was not a big thing in those days. There were lots of state tax problems, but very few cases went up--very few matters. Although when I got into the attorney general's office, I found there were a lot of cases.

Hicke: So you started at the attorney general's office in 1939?

Kragen: No, I think it was January of 1940; I'm not exactly certain. Valentine Brookes and I started the same day.

Hicke: Was this in San Francisco?

Kragen: Yes. You see, although the statute provides that the headquarters of the attorney general should be in the state capital in Sacramento, both the supreme court--which had the same thing in the statute--and the attorney general ignored it and had their headquarters in San Francisco. For example, we had maybe thirty or forty lawyers in San Francisco, maybe eight or ten in Sacramento, and twelve or fifteen in Los Angeles. In contrast, today I think you have hundreds in each of them.

Hicke: Do you remember that first day in the office?

Kragen: Yes, I remember coming in. I didn't see Warren. I had to take an oath of office, and I can't remember who administered it. Then I met Hartwell Linney, who was the head of the tax department, a tall, thin man who had been there for quite a few years under U. S. Webb. See, U. S. Webb had been attorney general for thirty-six years, and he'd let the office go to hell, in the sense that most of the people were either not doing any work at all or very little work, or the good people were doing a lot of outside practice and not spending very much time on the attorney general's work.

Warren finally persuaded Webb not to run again. Warren previously had gotten the legislature to increase the salary and tie it to the supreme court salary, and so it was much more attractive than it had been. So Warren ran and won easily.

But we had an office that was comprised of people who had been with Webb. Linney was a hard worker; he was in contrast to the other people. But he also wasn't as knowledgeable, I didn't think, about a lot of the tax stuff as he should have been. But he was very nice. I worked with him, and we had good relationships. He'd been speaker of the Arizona legislature before he came to California. He'd been a colonel in the army before that. I don't know how long he'd been in California when I met him.

He had one man working for him, a man named James Arditto, and then Valentine Brookes and I were added to the staff at that time, in early 1940.

Hicke: How did Warren know he was going to need you?

Kragen: Well, you could just look at the work of that office. For example, the first thing that I was given was seven hundred cases that had been pending, some of them for five years. Most of them we needed to get rid of, one way or another. Then there were big cases. All of us handled some very big California tax law cases. They were really big cases that went to the state supreme court and the United States Supreme Court.

Hicke: I'd like to hear about some of those.

Kragen: Well, there were a lot of them. We handled a lot of cases, you see, in both the trial courts and then the appellate courts. There were just lots of cases. Every time the supreme court met, Brookes and I and Arditto, when he was there--he left shortly after we came--had at least one case before the U.S. Supreme Court. So there was lots of work. I had a whole slew of cases that went up.

Standard Oil v. Johnson, 1941¹

Kragen: The first case I handled on the United States Supreme Court was Standard Oil v. Johnson, which was a test case. It went up in 1941. It probably went through the courts as fast as any case ever has. Standard Oil's lawyers were Pillsbury, Madison & Sutro, and the man working with me there--Sigvald Nielson was the tax man, but there was another fellow that I knew so well, who wrote a volume on the court; he'd been with the supreme court as a clerk, and then wrote a book on the work of the supreme court.

Hicke: Francis Kirkham?

¹Standard Oil Co. of California v. Johnson, 62 S.Ct., 1168, 316 U.S. 481, (1942).

Kragen: Sure, Francis. Is he still around? I haven't seen him for a long time.

Hicke: Yes.

Kragen: I had his son as a student.

Hicke: He's there, too.

Kragen: He wasn't there for a while, and then he came back some years ago.

But this case was the question of whether the sales tax was applicable to post exchanges. It was a test case. The Board of Equalization--of course, they would have liked the revenue, but they weren't pushing for the revenue--wanted the thing decided, as to whether they could tax sales on the post exchanges.

Hicke: This would be state tax?

Kragen: State sales tax. So as soon as we decided to go ahead with the thing--it was a refund case--they wrote the complaint, sent it to me in draft form, and I wrote the answer and sent it to them in draft form. We both went up to Sacramento when we had the pleadings ready, saw Judge [Malcolm C.] Glenn in Sacramento, and told him the situation. We had filed the case, and then we went in to see him with it. We asked him if he could hear the case, and he set it for the next week. There were stipulated facts. So we filed our briefs, and in a very short time--I can't remember exactly--he made his decision. We then went to Chief Justice Gibson, told him the situation, and filed an appeal to the supreme court. They heard it the next term. We had our briefs ready; we filed them together, passed them back and forth.

They decided the case against the state, and we decided to go to the United States Supreme Court. We filed in the Supreme Court, and the next term we went and argued it. Within two months the decision against the state, as we figured it was going to be, was decided. Within six months the whole process took place, because we just passed everything back and forth; we didn't fool with them.

Hicke: Did other states, then--?

Kragen: It was a very interesting situation. There was another identical case, South Carolina v. Query. I think it was South Carolina. The case was argued in either early or late '41. I think it was late '41, because I'd been in an accident and I had recovered and was all right. We had known about this other case; it was ahead of us on the calendar. So when we got into Washington, we sat down with the attorney general of South Carolina in a hotel room. I argued the case, but Hartwell went with me. It was evident very quickly that he [South Carolina's attorney general] didn't know anything, that he really didn't have the material. So we tried to persuade him to let us argue our case first, and he wouldn't.

Hicke: This was on the same subject?

Kragen: Same exactly. Basically the exact same set of facts. I had been there two or three days ahead. I sat in and watched and heard arguments, and just got the feel of the court. We got in, and the South Carolina attorney general got up. He must have said three or four sentences when Justice [Frank] Murphy said to him, "What is the legislative history of the creation of the post exchanges?" This attorney general said, "I'll be coming to that in a moment, your honor." Then he went on with something else.

Murphy repeated his question, and the attorney general said, "I'll be right to that." He went on to something else. Not more than five or eight minutes passed--ten minutes at the most, and I don't think it was that long--and the chief justice said, "I think we've heard enough from South Carolina." He sat him down after five minutes because he didn't answer Murphy's question.

The luncheon recess happened immediately after the solicitor general, who was arguing for the federal government, finished his argument. I ran up to the library. I thought I knew it all, but I went over the stuff. The first thing that happened when I got down there was that I said, "Mr. Justice Murphy, you asked a question of the attorney general. Here is the answer." [laughs] It didn't do me any good. I mean, we lost the case, which we sort of thought we would. It was in the middle of the war, and it would have made soldiers pay more. I thought we had a fair case; it was a case that could be won or lost.

Hicke: What was it like to argue a case in the Supreme Court?

Kragen: Oh, it was a great thrill. I loved it. I enjoyed it.

Hicke: Did you have to put on a morning coat and all?

Kragen: No. The solicitor general did, but the lawyers for private counsel did not. In this case the solicitor general argued, but also Kirkham did the main argument in our case. I don't remember that the solicitor general ever said any more than he'd said in the South Carolina case. Francis Kirkham argued the case and did a very good job.

Hicke: Do you remember any of the questions asked of you?

Kragen: Oh, not very many. Except the one thing I remember is that I gave a sort of hypothetical, and Justice [Robert H.] Jackson said, "Mr. Kragen, don't spoil a good argument by that sort of thing." I said, "Well, Mr. Justice Jackson, this is analogous to what was said yesterday," and I mentioned the case, I can't remember the name of it. He said, "Mr. Kragen, you'll hear anything in this court." [laughter] That I remember most.

Otherwise, they didn't really go after us. We made our arguments. [Justice Felix] Frankfurter didn't say a word, and he'd been the one that I'd listened to badgering lawyers. He didn't say a word in our case. Murphy, after I answered a question, never asked another question. Jackson asked one or two questions, I think, but not much. I don't think anybody else did in that case.

Hicke: How long did you have to wait for the decision?

Kragen: Oh, it was thirty or forty days. Not terribly long. [Justice Hugo L.] Black wrote the decision, I think. I haven't looked at the case for forty years anyway. One of my colleagues, a constitutional law teacher, tells me once a year, "Well, I taught your case today."

Hicke: How did the state happen to take that up in the first place?

Kragen: Because the Board of Equalization felt that it had to have a decision as to what its rights were in relation to sales and post exchanges.

Hicke: But what provoked them to look into this?

Kragen: Because the post exchange refused to pay sales tax. The post exchange said, "We're not liable for sales tax," and the Board said they were and levied an assessment against Standard Oil [Company of California]--this was for gas which was sold at the post exchanges by Standard Oil. But the same principle applied to any sales on the post exchanges.

Hicke: That had quite a bit of impact.

Kragen: Oh, it had a lot of impact. It would have been a lot of money if we'd won it. But you win some, you lose some. I won my share and lost my share.

Other Cases: Franchise Tax, Sales Tax, Personal Income Tax, Corporation Tax, Tax-deeded Land

Hicke: What about some of your other cases?

Kragen: We had a lot of cases. I had some interesting, sort of peculiar cases. I had one case involving the question of whether the sale of chinchillas for breeding purposes was a taxable sale.

Hicke: What was the problem?

Kragen: The chinchilla breeders argued that this was a service, and services weren't taxed in California. I said they were selling a product, the chinchillas, not the services they rendered in breeding. We won the case in our state supreme court.

Then we had a case, Puritan Ice,¹ which involved the question of whether or not there was tax on certain facets of the shipment of produce from California east--not the sale of the product, but the ice and other things that were involved in the preparation for the sales. So you learn a lot about other businesses.

¹Puritan Ice Co. v. Johnson, 24 C2d 645, 151 P2d 1 (1944).

I had a case, Helms Bakeries v. State Board of Equalization.¹ I can't remember the exact issue in that one, but I think it involved the question of whether certain equipment used in baking products was separately taxable--whether it went into the end product, which was food and was not taxable; or whether these things that were used in preparation were taxable. We won that one.

There was a case involving the question of whether the Northwestern Pacific sales of old locomotives and other equipment were occasional sales or taxable as sales under the act. I never counted them, but I must have had, in four and a half years, fifty or seventy-five appellate cases, and maybe more. I used to keep the briefs, but now I've thrown them all away. There were just a lot of cases of franchise tax, sales tax, and personal income tax. We worked very hard.

Hicke: Personal income tax?

Kragen: Yes, California personal income tax. It was then under the franchise tax commissioner; it's now under the Franchise Tax Board.

Hicke: Would that be individuals or businesses?

Kragen: Individuals. Then you had the franchise tax, which was for corporations, and the corporation income tax, which was for out-of-state corporations doing business in California. So we had a complicated system. But basically it was like the federal. I mean, the main provisions were the same as the federal in the income tax field. There were always enough differences--we're now much closer to the federal than we were then--to complicate the problem. But the principles were the same.

Hicke: You had some kind of cases where land had been--

Kragen: Tax-deeded land cases. One of the things I did was represent the state controller. The inheritance tax division had its own lawyers, but I advised them; I was sort of a counselor to them. But the tax-deeded land division used the attorney general as its lawyer. I went up every week and met with

¹Helms Bakeries v. State Board of Equalization, 53 C.A. 2d 417, 128 P2d 167, cert. den. 63 s. Ct. 530 (1942).

them. We had, from the Depression, just a lot of tax-deeded land in this state, where people hadn't been able to pay their real property taxes. After the [prescribed] period it was deeded to the state. We had all sorts of cases involving that.

The controller--or the tax collector of the area, but it was sent to the controller--would offer it for sale under the statute. Then cases arose out of that--the question of whether the former owner had a right to redeem under the circumstances. All sorts of questions. So we had a certain number of cases. Mostly I was advising them on situations, but we had a certain number of cases where we had to defend. The former owner would say the deed procedure was improper, was defective in one way or another, and sued the state. Or where the people who'd bought it, we considered hadn't properly handled the thing. That type of thing.

Hicke: Would those be tried in tax court?

Kragen: No. We don't have a tax court in California. They'd all be superior court cases, and then would go to a court of appeal or the supreme court, as the case may be.

Judges

Hicke: Do you remember any of the judges or justices?

Kragen: Oh, yes. A lot of our cases were tried in Sacramento. Peter Shields was an old judge up there, and a good judge. But I think he was ninety-something when he retired. And Malcolm Glenn, and a third judge, Lemmon. I tried cases up there, and I tried cases in Los Angeles, as well as in many other places.

In Los Angeles we had a deal that worked fairly successfully. The judges didn't like the tax cases. They were complicated; they weren't used to tax cases. Most of the judges had been lawyers who'd never had a tax matter in their lives. So we got together a list of about five or seven superior court judges that we thought were really qualified on tax matters. When we had a case in Los Angeles, we sat down with the other lawyers, submitted this list to them, and said, "Would you agree to have the case tried by one of these

judges?" And most of these tax cases weren't fact cases; they were law cases. The lawyers were good lawyers, and they'd agree. We'd agree to give the presiding judge of the superior court these names, and say, "Would you assign this case to one of these?" That worked in Los Angeles.

In San Francisco you couldn't do it. There really was nobody sitting on the San Francisco bench at that time that we thought was really somebody who knew the tax laws. I lost one case there, and lost it all the way; it went up on appeal, and we lost it there, too. I never could figure out how we lost it. It was a San Francisco judge, with the City of San Francisco going to have to pay a lot of money if they lost. This involved Hetch-Hetchy [Dam].

I would say that 60 percent of our cases were in Sacramento. I tried cases all over the state, but they were isolated. A few in Los Angeles. I tried a case in El Centro, I tried cases in Fresno and Modesto, in Eureka, Redding, and all over. But those were one case [each], whereas in Sacramento we were trying cases all the time.

Hicke: The judges in the smaller towns must have been even harder to deal with.

Kragen: Oh, the worst experience I ever had was in Modesto. I had three cases down there, little, tiny, sales tax cases. They weren't important, any one of them. We arranged to try them on successive days. I got down there and was either trying or had just got through trying the first two of the cases when I got word that my father had died. My mother was alone there, and I had to get up there. The third case was a minor case and didn't make much difference anyway.

I talked to the lawyer, who happened to be the son of a superior court judge; there were two or three superior court judges down there in Modesto. I said, "Look, can we postpone this?" He said, "I prepared a stipulation of facts that I know are correct. We can submit the stipulation of facts and a memorandum." I said okay. I looked them over, and they looked [fine]. I asked him if he had checked them over himself, and he said he had. Most of the lawyers I dealt with were honest, so I figured he had.

We did that, and the court decided against me. Practically at the same time as the decision came, the Board

of Equalization came to me and said, "These facts that the lawyer represented are false." I filed a motion for a new trial, and it was set for a day. This fellow called me. I was very gullible. He said, "You're completely right. My client gave me facts, and I relied on him. It was wrong. I'll go in and tell the judge that the motion for a new trial should be granted." The next thing I heard was the motion for a new trial denied.

I filed another motion, and I went down there. I recited the fact that this fellow had called me and what he had said. He got up and said, "I did call Mr. Kragen, and I did tell him this. But after I did, I realized that wouldn't be fair to my client. So I didn't do it." And the judge down there went along. We reversed him on appeal, but we had to appeal the damned thing. Eventually this lawyer went to jail. That's a funny experience.

I remember trying a case in Los Angeles before Judge [Charles S.] Burnell, who was very, very smart. He had been city attorney, but he had no judicial temperament. I was trying this case before him. It was Helms v. Board of Equalization. MacIntyre Faries--

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Kragen: --was one of the top lawyers in Los Angeles, one of the deans of the L. A. Bar.

I was trying this case, and I was cross-examining the treasurer of Helms Bakery, I think it was. I asked a question and Faries objected. The judge didn't say anything. Faries said, "Your honor, will you rule on my objection?" The judge said, "Overruled." Faries said, "Well, your honor, I have some supreme court cases that I think bear on this point." The judge looked at Faries and said, "Mr. Faries, you should know better. You know that I don't worry about supreme court cases. I make the law in this court." [laughs] He got numerous cases. The court chastised him. But he was right on the law. He understood the cases, and he knew what he was doing. He did lots of things that indicated he didn't care what the appellate courts thought.

Hicke: You'd think that after once or twice of having the appeal court coming down on him--

Kragen: Paid no attention to it. I had a number of cases [before him], because he was one of the judges on our panel. His decisions were good, but his methods in between were not very good. [laughs]

Hicke: Do you remember some of the other judges on this list?

Kragen: No, I cannot remember. Burnell I remember because he really did so many-- I had a case in San Diego before a Judge Wilson. He was big, heavy, had a shock of white hair. An impressive man. We were defending the case--this was a refund case--and I had given the plaintiff's lawyer four or five continuances. Finally a date was set and he didn't ask for a continuance. So I brought two witnesses from Sacramento down. It was a tax-deeded land case, I think. We appeared in court, and this attorney got up and asked for another continuance. I got up and said, "Your honor, if Mr. (whatever his name was) had asked for a continuance, I would have granted it to him. But here I am, since he didn't ask for it, and I brought two witnesses down at a cost to the state. I don't think he's entitled to a continuance." The judge looked at me. He said, "Mr. Kragen, I think you're probably right. But you want to remember one thing: I'm here among my constituents. Continuance granted." [laughs]

So you got some funny experiences with judges around the state. I went up one time to try a case in Lakeport before Judge Ben Jones, who was a very good judge. The case was set for 10 o'clock. I got up at 5 in the morning or something to drive up there and get there in time. I got into the courtroom about 10 minutes to 10, and nobody was there. Then the clerk came in, and I introduced myself and said I was there for the so-and-so case. She said, "Oh, that will be on at 1:30." I said, "It was set for 10." She said, "Yes, but this is hunting season." [laughter] You get some experiences with judges as you go along.

I remember Peter Shields, who, as I say, was a very good judge. But he got old. You'd see him sitting up on the bench and you didn't realize what was happening, until one day his

clerk called me. He said, "Adrian, you know that case you argued yesterday? There are some questions the judge wanted to ask about it on the facts and so forth. Could you, next time you're up here, come in and talk to him?" I called the attorney for the other side and told him, and he said to go on up and not worry about it.

So I went up, and the questions he asked me were the things we had presented to the judge. I realized then that he was asleep on the bench. He was ninety years old or better then, and he was asleep. Half a dozen times after that, when cases were before him, the clerk would call and protect him, saying there was a question or two. I'd call the other lawyer, and once or twice the other lawyer would come up with me. But most of the time I went alone.

Hicke: Did you ever think of stamping on the floor or something to wake him up?

Kragen: No, I just figured he was a very nice man. He decided a case in my favor, and the state court of appeal reversed. Then I took it to the supreme court, and he wrote me a long letter. He didn't want to be reversed. He wanted me to keep him apprised, and he made some suggestions for argument. He did not want to become reversed. And the supreme court went with him, so--

Election of Judges

Hicke: Some of the things you've been talking about have to do with the politics of law, I guess you could say. For instance, the one judge who had to keep in mind his constituents. Do you think the election of judges is good? Is there a problem there?

Kragen: I think the election of judges is a problem, because they have to spend so much time getting elected, campaigning, and it's so much money. I think we don't get the best. We can't from that. On the other hand, if you're going to let the governor appoint for life, as the president does, with the confirmation of the senate, why, you're going to get some very bad judges, I think, and worse than you get in an election. There's so much politics if you put in the confirmation by the state

senate; there's so much politics there. I don't know. I would favor, I think, a little longer terms, and put some restrictions on campaigning.

You know, we had election of supreme court and appellate court justices for many years in California. It was only, I think, in 1932 that we changed to appointed and the method by which you just affirm; you don't really elect. We've only had that one instance in which the justices have not been confirmed, in effect, when they had to run later for the office. And they're not running against anybody; they're running against themselves, which is better. That might be a better system, the appellate court system, at least on the superior court judges.

But I think mainly if we'd gain longer terms we might be better. I don't know. It's hard. There are advantages and disadvantages on both sides.

Differences in Quality of Practice

Hicke: Did you see any difference in the quality of legal practice in rural areas versus urban areas, or in the north versus the south?

Kragen: Oh, yes. In my field, especially. The tax field attracted people who were normally quite good, because they had to work so hard and it was so complicated that the average lawyer who was handling personal injury and other things didn't want to get into it. The tax lawyers were concentrated mainly in the big cities. You'd find a good tax lawyer--for example, there were some in San Diego and in Fresno, and of course Sacramento, but there were not many good tax lawyers in the rural areas. They just didn't have enough tax work. A lot of them called in lawyers from elsewhere for tax matters.

For example, both when I was in Los Angeles and after I retired here and went to work for a firm for a while, I represented lawyers from rural areas who brought their clients in.

Hicke: How about the north and the south?

Kragen: I don't know. There are very good tax lawyers in Los Angeles, and very good tax lawyers in San Francisco. There are more tax lawyers in Los Angeles, but I don't think they have a predominance as far as quality is concerned.

Hetch-Hetchy Case

Hicke: I wanted to ask you about that Hetch-Hetchy case that you mentioned.

Kragen: That was an interesting case. We put in a provision, either in the sales tax or the use tax, which taxed sales by government agencies--cities and so forth. As part of that provision, it did not apply to a contract for construction made prior to a certain date. Now, the contract for the construction of Hetch-Hetchy was between the Hetch-Hetchy superintendent--I think that was his title--and the City of San Francisco Superintendent of Public Works. It was the same person; Hetch-Hetchy was a division of the City of San Francisco. So the same man signed the contract for Hetch-Hetchy and for the City of San Francisco.

My argument, which I still think was a good one--but I lost it both in the appellate court and in the superior court--was that this was not a contract, because you can't make a contract with yourself. Well, the court went on another ground. The court said that it was the intention of the legislature to exempt from sales tax purchases under contracts for public construction contracted or agreed to before a [certain] date. Even though the law was that you couldn't contract with yourself, the court found that the intent of the legislature, which I really don't think they could find anywhere, was to exempt the type of situation involved in the Hetch-Hetchy case. And they decided against me on that ground.

I thought I'd win in appellate court. I knew I'd lose in San Francisco. I had a judge named [James G.] Conlin, who was a big political judge, so I thought I'd lose there. I think it was Ray Peters' division--he was on the appellate court then, and he was a very good judge--and he decided against me on the ground that this was what the legislature intended.

Hicke: What kind of a law is it that says you can't contract with yourself? Is that a state law or is that a federal law?

Kragen: Who are you going to sue? It was common law. How are you going to force a contract against yourself? I say I don't want to do it! I say I have to do it! [laughter]

Legislative Intent

Hicke: The court said that the legislative intent takes precedence over the common law?

Kragen: They said it didn't matter if it was a contract with yourself, in effect. They said that what the legislature intended with this type of construction should not be subject to tax, if it was contemplated before a certain date. I think they stretched the statute.

Hicke: The end result was that they said that legislative intent takes precedence over the common law.

Kragen: In a sense, yes. It does.

Hicke: Is that true in other--?

Kragen: Sure. Legislative intent is the law. If you can find what the statute means, that's the law, regardless of whether it was common law. That's in contrast to where there's a constitutional question: the legislative intent won't take precedence over the constitutional question. But over any general law question, it will.

Hicke: Can you tell me the name of this case?

Kragen: I think it was the City of San Francisco v. State Board of Equalization, but I'm not absolutely certain. This case must have been about forty-seven years ago. My memory is not that good.

Hicke: I'm trying to think who opposing counsel might be.

Kragen: It was actually the assistant city attorney.

Hicke: Would he, then, have presented some arguments as to how he perceived the intention? Did he go back to the legislative hearings?

Kragen: Normally we don't have any legislative record in California. We don't have a record of hearings such as we have federally. We normally don't keep any record of that. But there are all sorts of little tricks they do that they can use. I've done it when I was up there lobbying. For example, you get the author to put a statement in the journals. Sometimes the courts buy that, and sometimes they don't. It depends on what the court wants to do. I've used it both ways--won with it and lost with it.

Or they get some other statement made that they can use for that purpose. They can't really reconstruct the arguments, but they get letters between the authors and so forth. If the court wants to go that way, it buys this. If not, it says, "This is no evidence of legislative intent." I've seen both said. I've had cases I won that way, and cases I lost, with the same questions involved.

Hicke: Isn't there some procedure now, though, for recording legislative intent? Wasn't some legislation passed?

Kragen: I don't know. There may be. But I do not know of any provision.

Hicke: It seems like it would be a reasonable--

Kragen: But what is legislative intent? The thing is, I did it. I can't remember what the bill was, but I wanted to be sure. When the bill was up before the legislature, I had the author make a statement as to what the intent was. But the author's intent is not necessarily the legislature's intent. But the court uses it when it wants to.

Hicke: It seems like a gray area.

Kragen: Oh, it is! Very much. I remember in Consolidated Rock--I can't remember all the details of these at all--they said there was no showing of legislative intent. And in Bekins Van

Lines v. State Board¹ they said basically the same thing indicated the legislative intent. The supreme court in both cases.

Hicke: Consolidated Rock strikes a bell with me.

Kragen: I can't even remember what the case was about. That was a long, long time ago, about 1940 or '41.

Hicke: Do you remember if Pillsbury, Madison & Sutro were in it?

Kragen: They might have been in it. They were in a lot of cases. Sig Nielson, who was their tax man, and I just had lots of cases together. They had a lot of Standard Oil cases, and then they had a lot of telephone [Pacific Telephone & Telegraph Company] and other cases that we were involved with.

Stipulation of Facts

Hicke: Can you tell me a little bit about Sig Nielson?

Kragen: Well, he was a very good lawyer, a very convivial man. We got along very well. He ran a good department, and he won a lot of cases and was a good man. He was sort of a character, as most people are. I got along very well with him. We sat down and stipulated a lot of things over the years; I could trust him.

Did I tell you about my first experience in the attorney general's office with stipulations to facts? Roger Traynor had said to me that the attorney general in the tax cases, he believed, was stipulating away his cases, because there was so much stuff, and the people in the attorney general's office didn't work very hard until Warren got in. They'd take a stipulation of facts, and Roger felt they lost cases because they agreed in the stipulation to facts the other party could not prove. So he had warned me to be careful.

¹Bekins Van Lines, Inc. v. State Board of Equalization, 62 C2d 84, 41 Cal Rptr 293, 396 P2d 713 (1964).

I was very careful. The first case I had was, I think, another Standard Oil v. Johnson case, but this involved the railroads. It involved the sale of oil by Standard to the railroads.

Hicke: Who was Johnson?

Kragen: [Charles G.] Johnson was the treasurer. Why would I say Standard Oil v. Johnson? It may not have been Johnson. I know the case in the supreme court was Standard Oil v. Johnson. Maybe in a suit for refund Johnson had to be named. I can't be sure.

But the attorneys on the other side were top attorneys representing the railroads--Charlie Dooling, Gregory Harrison, and I can't remember who else. When I looked over the stipulation, I wrote a letter and said that I didn't believe that I could sign this stipulation because I did not have supporting documentation. They asked for a meeting, so the four or five lawyers and I met in the office, and I told them my story. Mr. Gregory Harrison said, "Mr. Kragen, I wrote that stipulation." I said, "Thank you, Mr. Harrison, but I can't sign it." He said, "Mr. Kragen, I said I wrote that stipulation." I said, "Sorry, Mr. Harrison, but whether you or anybody else wrote it, I cannot sign the stipulation unless I get documents that show me the facts sustaining it." He just got up and walked out.

Charlie Dooling said, "Don't worry, we'll work it out." It was Western Pacific [Railroad], I think, that he represented. Eventually they gave me the facts that sustained the stipulation. But Gregory Harrison--if he wrote it, it was true! [laughs]

Now, his brother was entirely different. Maurice was a much nicer person. Gregory was an arrogant man.

Tax Attorneys

Hicke: How about some of the other tax lawyers that you worked against? How about Mc Cutchen [Doyle, Brown & Enersen]?

Kragen: I don't remember having a case against McCutchen. My son-in-law is with McCutchen now and has been a partner there for some time. They were big trial lawyers, but I don't think I had a case against them.

Hicke: Morrison and Foerster?

Kragen: Oh, yes. What was his name? A lot of these firms did not have real tax people. [Adolph] Graupner was a tax lawyer with his own firm. Sig I worked with so much that I remember him.

I remember one lawyer--I can't remember his name--with this Bekins Van Lines case. In that case, we were waiting in the foyer outside the supreme court chambers with this lawyer whose name I cannot remember--I think deliberately I do not remember it--who was an older lawyer and had handled a lot of tax cases for the transportation industry. He was a lone practitioner, and I had had other cases involving his clients. He said, "You know, Adrian, I'm getting older and I think I ought to get somebody in to work with me--take in a partner. If I win this case, I think I'm going to ask you to come in as the partner." Well, I considered that an effort to bribe me, and I just walked away. I didn't answer him. I never talked to him. We won the case. He never said another word to me. [laughs]

I can't remember the names of the lawyers I dealt with. There were a lot of them. A fellow named Kelly in San Diego had a lot of cases. MacIntyre Faries had a lot of cases. Parker, from Parker, Millikin, both of them had a lot of cases; they were a tax firm. You see, three years before I went down to the Loeb office they didn't do any tax work; they sent it all out. They finally hired Frank Keesling, and then they hired me. A few of the firms had tax people, and I think Morrison must have had them. Brobeck had tax people. A lot of the so-called big firms--well, they weren't that big--didn't have tax people. I worked with Maynard Toll from O'Melveny & Myers, Norman Sterry from Gibson, Dunn & Crutcher, Dana Latham from Latham & Watkins, and many others.

Hicke: Bob [Robert] Harris?

Kragen: Bob Harris is after that. From Heller, Ehrman? I don't think Bob was doing tax work in those days. There was an early case--not a tax case--that I had with [Richard E.] Guggenhime. The old man, not young Dick; Dick's father.

Hicke: What was that about?

Kragen: That was a case when I was with Lackenbach, Radius v. Travelers' Insurance.¹

Hicke: Which side were you on?

Kragen: We were on Radius. We lost it. It was a question of what was the coverage of an insurance policy.

Hicke: Was it an accident or something?

Kragen: It was an accident question as to whether that particular type of accident was covered, and the court held that it wasn't. It was in the federal district court.

Hicke: Any others?

Kragen: Harry Horrow at Pillsbury, after Sig--I did work with Harry. There were so many of them that really didn't do tax work [telephone interruption]. I'm trying to think who the tax lawyers were.

Hicke: You've named quite a few tax lawyers already.

Private Car Tax Act Case

Kragen: There were others, though, because we had so much stuff. For example, we had a case on the Private Car Tax Act, which was taxing refrigerator cars and that type of thing. I can't remember the fellow's name, but he came out from Chicago to handle the case.

Hicke: Representing who?

Kragen: Representing the owners of the cars. You see, the railroads didn't own these cars; they leased them.

Hicke: What was the problem?

¹Radius v. Travelers' Insurance 87 F 2d 412 (1937).

Kragen: It was a question of whether the Private Car Tax Act applied, and how it applied. We did a tax based on percentage of time in the state, the total use.

Hicke: Oh, it was the unitary--?

Kragen: No, that's franchise tax. This is tax on private cars. Their argument was that if the car was in interstate commerce, it would not be subject to tax in California. We said that it was subject to tax in California for that percentage of time that it was earning income by mileage in California.

Hicke: You must have won that.

Kragen: We won. That was a very funny experience, though. I was on my way to argue Standard Oil v. Johnson. We wanted to take depositions from certain of his clients, and this fellow asked if we could do it in Chicago. Linney and I agreed that we'd do it in Chicago on the way to Washington. We'd give them two days, and stay two days in Chicago. We got into Chicago, and this fellow called us at the hotel and said he'd like us to come to dinner with him. I said fine, and we went to a place called the Chez Paris. I'd never been in Chicago before. I guess I'd never been East before!

We got there, and he met us.

##

Kragen: Some friend was with him. He was the president of Bulova Watch Company. There was no reason; he was just with him, as far as I know. He sat us at the bar. Hartwell Linney and I were seated one seat apart and one seat away from the lawyer. There was a seat on each side, he and his friend.

All of a sudden a couple of beautiful girls sit down next to us. After about five or ten minutes, Hartwell turns to me--I didn't know what the hell was going on--and says, "I think we'd better get out of here." Hartwell had diabetes, so I made the excuse that he wasn't feeling well, and we left. [laughs] The next day we went and took the depositions. You did things in a different way in Chicago.

Refund Cases: Constitutional Tax Law

- Hicke: Did you have any other cases where there were problems like this that were slightly unethical?
- Kragen: No, I don't think so. I can't remember any other than those I recited. Most of the cases went the usual way. You know, you tried the case, you went on appeal, you argued the case, and that was it.
- Hicke: Business as usual.
- Kragen: Yes. And most of them were in the court of appeal or the supreme court. That was where we really determined the case.
- Hicke: Did they mostly come to you from the State Board of Equalization and the--?
- Kragen: The State Board of Equalization and the Franchise Tax Board. Most of the cases were refund cases. We had a whole group of collection cases when I came in the office. There were hundreds of them. I went over them and decided which cases could be tried; on some of them the five-year requirement had expired, so we got rid of those. Other cases weren't worth trying. Then we scheduled a lot of them, and when you set them for trial there was a default and you got rid of them because people weren't ready to spend time and money on them.
- Then when we hired Jim Sabine I turned all of those cases that were left to him as the new boy in the office. But most of our cases were refund cases. They came, and there was a refund, and they went through the process of denial of the refund, and filed the case in the courts. That was the major portion of the cases. Once in a while we would initiate a case that was of some importance, but that was very, very seldom.
- Hicke: Can you tell me about constitutional tax law as opposed to cases that did not involve constitutional tax law?
- Kragen: The cases that involved the constitution were basically due process, equal protection cases. But by my time, by the time I got into the office, there were very few constitutional cases left. I think Val Brookes had a constitutional case on the unitary business provision--Butler Brothers--but I don't

think I had a case that was really a constitutional law case. They were mostly statutory--application of the statute.

Hicke: Were the California tax laws changing during the period you were in the office?

Kragen: Yes, but not like they do now. But they were changing. There were always provisions coming in. There were always people wanting to get exemptions, or things that they wanted to increase the tax. I don't think I told you about Corbett v. Printers & Publishers. That was a case that in itself was very important, but it's more important to me because of what it indicated about Earl Warren. It was a case involving the question of whether newsprint sold to newspapers for use in printing papers was subject to the sales or use tax. Printers and Publishers were the sellers of the newsprint to the newspapers.

It was in the federal court, and I guess it was just about ready for trial when Warren called me in the office. There were the attorneys for all the newspapers--John Francis Neylan and the rest of the various attorneys for the Hearst papers, the L.A. Times, the Chronicle and other papers. He said, "These gentlemen here tell me we have a case called Corbett v. Printers & Publishers, and it's an important case." I said yes, it was, and he said, "I understand that you told the Board of Equalization that if this case is lost, it's your opinion that we have to tell the board to tax sales of newspapers as an ultimate sale, because that's the way the law read." I said yes.

He said, "Can we lose the case?" I said, "We can always lose the case. I think we have a good case, but we can always lose the case." He said, "Do you think it's an important case? These people would like me to tell you to dismiss the case." I said I thought it was an important case; the question was a very important issue. He said, "Gentlemen, you have your answer." This was in the middle of his first campaign for governor, when he was still attorney general. He had the lawyers representing all the major newspapers in California with him, and he just said, "You have your answer." I went ahead. I won the case, luckily! [laughs]

Attorney General's Office

Hicke: We haven't talked much about Earl Warren, but we have an oral history on him, in which you talked a lot about him.¹

Kragen: Yes. I may have talked about Corbett v. Printers & Publishers, because it left a big imprint on my mind. Incidentally (not in relation to this), Mrs. [Nina] Warren is still living. She's ninety-six years old, lives alone in that apartment in the Sheraton Park.

Hicke: How long were you in the A. G.'s office?

Kragen: I went there in January or February of '40, and I left there in March of '44.

Hicke: Do you think we've covered most of what you did there?

Kragen: Yes. A lot of things happened in that office. It was a very good office. It was a very well-run office. It was a good experience and I learned a lot.

Hicke: Where were the physical offices?

Kragen: They were on the sixth floor of the State Building, which everybody is now going to move out of so they can earthquake-proof it. The supreme court is moving, I don't know when. The attorney general will move eventually, I suppose.²

Hicke: You didn't know you were working in a hazardous building?.

Kragen: We didn't know anything about those things in those days.

Hicke: What was the commute like, just as an aside?

¹See Adrian Kragen, "State and Industry Interests in Taxation, and Observations of Earl Warren," in Earl Warren: Views and Episodes, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1976.

²They have all moved since the October 17, 1989, earthquake.

Kragen: It was all right. I was living in Piedmont then. I bought a house in Piedmont in '41. I either took a streetcar or walked to the Key System trains up there on Trestle Glen. I remember Ray Peters and I usually commuted at the same time. We'd come over to San Francisco, and most of the time--I left early, about seven or seven-thirty--we'd walk up from the terminal, which is where the terminal is now, to the State Building. If we were late or needed to, we'd take a streetcar, but normally we'd walk. It was about a twenty-minute walk. In those days I could walk. But it was not a bad commute. It was not crowded. There were plenty of people, but normally you didn't have to stand. Of course, we got it at the beginning of the line; there was no stop before the station we used.

Hicke: Maybe next time we can start with 1944, when you moved to Los Angeles.

Kragen: Yes, it was February or March that I moved there.

IV LOEB & LOEB, LOS ANGELES, 1944-1952

Decision to Leave the Attorney General's Office

[Interview 3: July 17, 1989]##

Hicke: Last time, as you recall, we were in the attorney general's office. I think we pretty well covered that and just about got up to 1944. At that point were you actively searching for something else?

Kragen: No, I was not. That is, I was not searching at all, but I was getting offers. People were searching me out. Brobeck, Phleger & Harrison made me an offer. I did not want to go there, although the man who made the offer was a good friend of mine, Ted [Theodore R.] Meyer, who was a regent [of the University of California] for a while and was a fine lawyer.

Then I got an offer from Loeb & Loeb in Los Angeles, and I turned them down because I was happy in the office. What happened was that just after I turned them down there was an interview in the Sacramento Bee with Robert Kenny, who was the attorney general at that time; Warren was then governor. This was probably about October or November of 1943. In that interview he said that he was going to move the heads of the various departments of his office to the state capital in Sacramento, and the first one that was going to be moved, of course, was the tax department. And I was the head of the tax department.

Well, I didn't want to move to Sacramento. The next day after I read that article, I got another call from Edwin Loeb of Loeb & Loeb, who increased their offer to me. At the time of the first offer--either the first or the second one--I had

gone down there and talked to the people. Eventually I accepted their offer, which was to pay me two and a half times what I was getting as head of the tax department in the attorney general's office. As I told my wife, who had an equal say in the decision to move, we could save at least half of that, and after five or six years we would have enough money--because we never had much money--to do what we wanted: open my own office up here, or whatever.

So I decided to go down there. By that time it was probably November of '43. I'm not sure of the month, but we agreed I would start there by February 1 of '44. I had to shift over cases and do a lot of things. So that's what I did.

I went down alone for about the first ten or twelve weeks. I was alone; my wife and family stayed up here until I found a place for them to live. I was living in a hotel in downtown Los Angeles--not a very good hotel, either, as far as I remember it.

Building up the Firm's Tax Practice

Hicke: You indicated once before that you were the second tax lawyer hired. Is it correct that they hired you specifically to do tax work?

Kragen: Yes. They hired me to do solely California tax work. That was the understanding, because that was my specialty--the state of California stuff. They had hired a man named Samuel Taylor, who was a tax lawyer up here, to do the federal tax work. Sam and I had both gone down on this trip [to talk to them]. I knew Sam very well, and he'd agreed to come. The funny thing was that just before I left, at the end of January or the first of February, I called him and said I was leaving. He wasn't going to go down until March. I called him to see if there were any messages, and he said no. But as soon as I got down there, Edwin Loeb informed me that Taylor had backed out and they had hired somebody else, a fellow named [George] Zeutsius from the federal government. He was a Department of Justice district court tax lawyer. I found him to be impossible eventually.

What happened as a result was that when I got there, although he was supposed to handle this stuff, he really was

not that good--at least he didn't appear to me to be that good. They started pushing more of the federal stuff to me, and eventually, after a month or so, they asked me to take care of assigning all the cases, determining who went. As a result, Zeutsius and I had a big blow-up, and eventually they asked him to leave--which itself was a crisis, because he said he had a lifetime job there [laughs] and he wasn't going to leave until he found exactly what he wanted. They finally locked him out.

Hicke: Did you come in as an associate?

Kragen: I came in as an associate in February. I was there eleven months and they made me a partner, which was a real problem for them because they had never made anybody a partner before five years with them. I had been fairly successful with them, and they were afraid--I was getting offers--that I would go someplace else.

Hicke: Latham & Watkins was a big tax firm, wasn't it?

Kragen: They were basically tax and labor in those days. Now they have all things. I've got a lot of ex-students in their office. Dana Latham was a close friend of mine. In fact, after I started teaching up here, Dana came up every year to give a lecture in my course for me. Even when he was in Washington he came out from Washington. He was a wonderful man, and a very good lawyer.

But there were a lot of other firms. The Parker firm was a tax firm; Larry Irell, whose firm eventually became Irell & Manella, was a tax firm--did nothing but tax, and quite a lot of it. The thing was that for many years, what had happened until maybe three or four years before I came down, the firms like Loeb & Loeb didn't do tax work; they sent it all out. And that was true, I think, of Gibson [Dunn, & Crutcher] and O'Melveny [& Myers] for a long time. Tax work was something that general lawyers didn't do in those days. Then they realized the importance of the tax field and that they were losing revenue and sometimes clients.

The Loeb office had hired a man from Sacramento, Frank Keesling, about three or four years [before], and had another man, Leon Levi who had been down there, and the two of them started doing tax work. The reason they were so anxious to get me was that Keesling had been drafted--it was during the war, of course--and the other man had left to go to Max

Factor, one of their clients. So they were stuck; they didn't have any tax people except a young fellow who had been out in practice a year or two and who, actually, was quite good, but nobody had any confidence in him, unfortunately, and never did have any confidence in him. Eventually he had a chance to get a good job elsewhere, and I advised him to leave. Because you couldn't convince the partners that he would ever make a partner. I thought he was very good; a very nice man.

Hicke: So it was really a conscious decision on the firm's part to build a tax practice.

Kragen: Yes. I don't know how they are now, but they never made enough of a commitment to do a real full-time job as tax [lawyers], I didn't think.

Representing the Motion Picture Industry Before the Legislature

Kragen: After I got down there, something I hadn't planned on at all was that I started going to Sacramento, representing a peculiar situation. What they had was a deal whereby the motion picture industry paid for and furnished a technician on unemployment insurance and general tax matters to all of industry. I did the drafting, analyzed bills, and appeared before the committees. Each one of the organizations had their own regular lobbyists, including the motion picture industry. I was technically a lobbyist, but I was basically a technician. I was the one who drafted bills, analyzed bills, appeared before committees to argue them, but didn't solicit votes directly.

Each of the studios and the associations paid a weekly retainer for that service, and I was up there during the entire session. How I got into the California Retailers was that the Retailers were the main lobbyists on unemployment insurance. A fellow named Vincent Kennedy was at that time the main lobbyist on unemployment insurance for all of industry. The Retailers, in effect, gave him to industry to lobby on a lot of things, but on unemployment insurance bills he was the lead and I was his technician, actually. I worked with him, and after a year--this was in '45, I guess--he asked me if I would become their general counsel. I did, and have been since. They put me on retainer in '46.

[Professor Kragen provided the following supplementary material in written form]

I think it might be worthwhile to give a brief history of the California Retailers Association [CRA], which has played an important role in my professional career. It was organized when the first sales tax legislation had been enacted. Its members were the major department stores, and among the organizers were A.B.C. Dohrman, Newton Hale, Harry Buffum, Ned Lipman, and others. Vincent D. Kennedy, who had been on the staff of Governor C. C. Young and was very knowledgeable about the California legislature, was selected to be the professional head of the organization. It quickly became one of the most influential trade associations in the state. It was the leader among the industry associations on any matter involving sales and use tax, and when unemployment insurance came into being, CRA under Kennedy's leadership became the industry spokesman in this area.

The association was very successful in its activities. Starting in about 1940, the Motion Picture Producers Association joined the activity in the unemployment insurance area by supplying a lawyer to handle the technical work, arguments, drafting, etc. Leon Levi was the first lawyer furnished by the association. He was with Loeb & Loeb. When he left to become general counsel for Max Factor, I succeeded him in 1944. In 1946, Vince Kennedy asked me to be general counsel for CRA, and I have served in that capacity since that time. I handled legal work for the association, drafted and presented measures to the California legislature, and advised the board of directors and various committees. It involved many matters outside unemployment insurance. Thus, I have been concerned with credit, shoplifting, toxic waste, employee discharge, recycling, taxes, and a lot of other areas with which the CRA and its members had concerns. The association grew over the years to include some specialty stores, the supermarket chains, and the drug chains. After Kennedy's retirement, Robert Shillito took over and has been executive vice president for many years. I have worked closely with Bob and other members of the staff, Les Howe, Helen Gale, Judy Mac, and Judy Wilson, and it has been a very fine association for me. The CRA is regarded as one of the top trade associations in the state and as one whose integrity is unquestioned.

[end of supplementary material]

Hicke: Did you first go up there as a representative of Loeb & Loeb?

Kragen: I went up there as a representative of the motion picture industry.

Hicke: But did the business come to Loeb & Loeb, and they designated you?

Kragen: Yes. The man who had left to go to Max Factor had done that before. I didn't know that. In fact, I didn't think I was going to be traveling much; that was the reason my wife was glad to come up here, because I was away so much. But they had worked out a deal, and I don't know the background of where it came from, where Kennedy would do the basic lobbying on unemployment insurance and the motion picture industry would furnish someone who would do the technical work. A man named Leon Levi had been doing that; he was the one who went to Max Factor. So when I came down, that's what they anticipated. They hadn't said anything to me about it [laughs], and I could have said no. I mean, they asked me if I would do it.

I had had some experience with the legislature while I was deputy attorney general with Warren, so it sounded to me to be logical and something that I could do. I didn't realize I was going to be away as much as I was.

So I started in the short session in '45. In those days we had a long session and a short session. The legislators were part-time people, supposedly. I think '46 was the long session, and the short session was '45 that I went up on. Then I kept going on that until I came up here.

Hicke: Since we're on this, let's pursue it and go back to your other work in Loeb & Loeb later. What were your first impressions when you went up to Sacramento--of your job and the legislature?

Kragen: I tell you, the first bill I argued, I really made an impassioned talk, which was horrible.

Hicke: Before whom?

Kragen: Before the Assembly Finance and Insurance Committee. I made a really impassioned talk on a bill, and we lost the bill,

which we should have won. I really gave them my July 4 speech on all the reasons. Kennedy got me--I'll never forget it--and we went back to the room. He was a man with a lot of problems of one sort or another, and he really could get mad and give hell. But he didn't. He very nicely, for about three hours, talked to me about what the legislature needed, what it wanted, how you had to handle bills, and the mistakes I'd made. It was a tremendous learning experience, and I was grateful to him from then on.

Unemployment Insurance Spokesperson

Kragen: The committee meetings were mostly at night in those days, in contrast to the present system. I would do some drafting, go over the bills--I'd go over all the bills on unemployment insurance and on taxation, although we didn't do as much in tax. Unemployment insurance was a tax measure, actually, as far as we were concerned, but on the straight tax stuff there wasn't all the unanimity that there was on unemployment insurance among the thirty-some industrial groups that we represented in this deal. But I'd go over the bills, analyze them, make arguments, meet with various people, meet with other lobbyists who were also helping to push or get votes, and give them the arguments I thought were adequate for it.

Then on most evenings I had one or more committee meetings, because we had lots of legislation. Starting in '46, when I also was doing the Retailers, I did the matters which I do now for the Retailers--credit, shoplifting, bottle bills, all sorts of things that the Retailers were interested in. You see, the California Retailers at that time basically just represented department store retailers and some specialty stuff. Now they represent all the chain drugstores and the chain supermarkets. It's a very big organization, not in number of members but in the power of it.

That's what I did. I had a hotel room in the Senator [Hotel], and I worked in that hotel room and in the Retailers' office, which was also in the Senator at that time. They also had a San Francisco and Los Angeles office then. Then I was always doing California tax matters for our clients--Loeb & Loeb clients. They sent the matters up to me. And I was drafting briefs and all sorts of things. I kept pretty busy.

Hicke: You said that you had to represent these fairly broad groups, and you had to find some point of unanimity.

Kragen: Well, in unemployment insurance there was no great problem. Everybody was pretty well agreed. The outfit we had the most trouble with was the telephone company, but we really didn't have a lot of trouble.

A funny story: a few years after I'd started, Jack Shelley was on the senate committee that handled unemployment insurance. I think it was Finance and Insurance, or something like that. One day he asked me who I represented, and I said I represented a number of industrial and retail organizations. He said he would like a list, so I said I would give him one. So the next day I gave him a list of thirty different organizations. Well, he hadn't wanted it; it was Mary Ellen [Leary] who wanted it. A few days after that there were two articles on "the man behind the industrial lobby," me! I had no influence at all, but the way Mary Ellen wrote it, I was a bigshot. She wrote two articles on the guy who influenced the industrial lobby on unemployment insurance. My mother phoned and wanted to know what I was doing there in Sacramento, because she had read the articles [laughs]. I've often kidded Mary Ellen about that, because we've become very close friends.

We really were the spokespeople for the industrial lobby on unemployment insurance. Practically no one else ever got up and spoke for industry. Labor had the same thing. They had a guy named Charlie Scully. Charlie spoke for labor, and I spoke for industry on any unemployment insurance--and, later, also disability insurance--measures.

Hicke: What was your position?

Kragen: Our position was basically that we were in agreement that unemployment insurance was a good thing, but we wanted to try to hold down the cost and do things that we thought appropriate. California has had, and still has, some provisions that gave people unemployment insurance who we thought should not get it--people who weren't regularly in the labor market. One of our big efforts was to try to get changes that would restrict, or at least make it a broader definition of employment. So if you were in the market for just a few weeks--like cannery workers, which was one of the big examples; they were in the market for a few weeks, and then they were back being housewives or students or whatever they were. We didn't think they should be the rest of the

time on unemployment insurance. That was one of the things that we tried.

Also the rates, of course, and the merit system. There's a system where if you don't have a lot of claims, your rate will go down. There are varying rates. We were always trying to do things which would make our people fit within the structure, which gave them a better break in the rate they paid on unemployment insurance. And in the early years the employees paid one percent for unemployment insurance. Then that was shifted over--I can't remember what year--to pay the cost of disability insurance, which was put in; it wasn't in the statute originally. The employee paid--and I think still does pay--the entire cost of the disability insurance. A lot of employers actually pay it, but it's an employee tax.

I was up there drafting measures and then arguing before the legislature. We met with individuals--some individual we were trying to convince of our position. Usually it was someone who was either on the fence or generally favorable to us. We'd try to convince them of our position, and I was the one who had to go in and tell them the argument that I thought justified our position.

Hicke: Do you recall who you worked with mostly?

Kragen: There were a lot of people. I worked with all the industrial lobbyists.

Lobbyists and Legislators

Hicke: I'd like to hear about the other lobbyists, and I'd like to hear about the legislators that you worked with.

Kragen: There was a senator named [Clarence C.] Ward who handled our stuff in the senate. I can't remember who handled it in the assembly. Tommy [Thomas] Kuchel when he was a senator was always one who handled some of our legislation. We had Charlie [Charles] Lyon in the assembly who handled some. Gardiner Johnson handled some of it. A lot of legislators handled employer legislation.

Hicke: Bill [William] Rich?

Kragen: He handled some of it. He was one of the leaders. He was from Woodland, as I remember. He and Charlie [Charles] Brown from Inyo and Mono counties, and Earl Desmond, George Hatfield--they were all real leaders of the senate. Bill Rich, I think, was the president pro-tem, they called it, for a while. He was a very good man. We worked with all of them. Bill's been dead for many, many years.

Hicke: At that point were you concerned with whether there was more power in the assembly or the senate?

Kragen: In those days, the way the senate was elected it was a conservative body, and it was a business-oriented body. We could usually count on the senate to kill the worst legislation. Of course they would adopt some legislation we didn't like, but the really bad stuff you could count on the senate killing. Until you got the "one person, one vote" rule, the senate in California was a conservative body: heavily farmers, some lawyers. You could really count on them. Not all; every once in a while something would go haywire, but generally they would be with us.

The assembly was a much more diverse group. Today you wouldn't consider them liberal, but we considered them a much more liberal group, although the first few years I was up there, the assembly was generally with us. By the late forties, the assembly turned around and was a difficult body, from the standpoint of business.

Hicke: Why did that happen?

Kragen: A change, I think, in the voting population and the people who were coming to California. A shift in the population, and a shift in the people who were running for office.

Hicke: So would you spend more time trying to persuade assemblymen or talking to senators?

Kragen: I think we spent the same amount of time on each. When the crisis was down, you were spending a lot of time with particular individuals.

Hicke: Were there one or two people that you went to often?

Kragen: Men like Bill Rich, or Charlie Brown, or Earl Desmond, or Clarence Ward, who handled a lot of our legislation. Tommy Kuchel was with us most of the time. We'd go to any one of them that looked as if he was someone we worked with. You

see, in those days there was much more leadership; they followed. I mean, if Bill Rich and Charlie Brown and George Hatfield were for something or against it in the senate, that would be a tremendous help. You wouldn't always win those, but you usually would.

Hicke: They were a powerful force.

Kragen: Yes. And in the assembly, even fellows like Charlie Lyon, who was not the most honest guy in the world from subsequent developments, or George Collins--and Gardiner Johnson had a lot of following. These people had people who would follow them. There were a lot more leaders than I think there are today.

Hicke: How about other lobbyists?

Kragen: For example, Charlie Stevens was the oil company lobbyist, who was very powerful. Of course, Artie [Arthur] Samish was up there in those days, but I had nothing to do, basically, with Artie. The lobbyists worked with him; I had nothing to do with him. In fact, the first time I went up there for Earl Warren--this was when Earl Warren was still attorney general--he sent me up--

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Kragen: --on a particular piece of legislation; I don't even remember what it was. He said, "I only give you one instruction, Adrian. Don't even talk to Artie Samish. Don't even say hello to Artie Samish." [laughs] I knew him generally when I was up there lobbying for Loeb & Loeb. I knew him, I saw him, but I didn't deal with him at all, because he wasn't involved in our group that monitored unemployment insurance or tax matters. He was interested in the particular monopolies that he was trying to get for the industry-- liquor and beer and so forth.

But people like Charlie Stevens and Al Shults, who were the oil company people; a fellow named Jack Doran, who was the Del Monte man who represented all the cannery people; Colonel Blank, who represented the phone company; Kent Redwine represented the motion picture industry. They were part of the group that met, and we discussed unemployment insurance strategies with them. Because it was a big dollar item to all of them.

We met, and when we agreed on what we were going to do on anything, I did the technical work and Kennedy did the basic lobbying. On the actual lobbying, everybody did some of it, because they had influence with various senators and assemblymen because of area or interest. Like Charlie Stevens was particularly influential with a certain number of senators, and others were influential with various other people.

One of the funny stories: when Warren became governor-- maybe not right away, but at least by the time I got up there--when a bill came to his desk he started sending a little note to all the lobbyists saying, "This bill is now before me for signature. If you have any support or opposition, please advise me." The first time Charlie Stevens got one of these, I was in the Retailers' office and he came in and said to Kennedy, "Vince, have you gotten one of these?" Vince said yes, he'd sent it in saying he had no opposition to it. Stevens said, "I think I'll send in an answer, and I'll put on it, 'Governor, if I was opposed to it, it wouldn't be on your desk'." [laughter]

We got the group of lobbyists who were interested in unemployment insurance together frequently, talked over legislation initiated from labor, which was always introducing a lot of legislation on unemployment insurance. And every once in a while we would get together with labor and do a package that we could all agree on. Neil Haggerty was the labor lobbyist, and Charlie Scully was the labor lawyer who was in my position, my opposite. We were very friendly with them. Neil was eventually a regent here at the University for many years. A very nice man, and so was Charlie.

If there was a chance that we could get a bill that we could all agree on, we'd do it. And we did that not infrequently. We got agreement on a package, maybe not every year, but every few years.

Hicke: Then would that pass pretty easily?

Kragen: Oh, that was a cinch. Actually, once we agreed on a package we'd go to the governor. We'd tell him what we'd agreed on, and ask him if he had any comments--or someone on his staff, like Jim Oakley or [William] Sweigert, or whoever we were talking to. If there were any objections or anything he didn't like, then we'd try to see what we could do. But normally the governor's people would say, "Fine."

Hicke: Would that happen very often?

Kragen: I was up there for about ten years, and I imagine it happened two or three times in that period.

Hicke: Who would be the motivating force?

Kragen: Haggerty and Kennedy would be the motivating forces on it. They'd figure the votes. If either one had the votes to completely beat, with no question at all, the other's proposal, they wouldn't get together. But if it was a deal where there was a real question whether the other party's proposal would go through, why, you'd try to work out something. Or at times it was just that the laws needed to be changed, and we were all agreed that they needed to be changed.

Rates, for example. There was an increase in the cost of living and everything, and we knew that wages were going up and there had to be some change. We'd try to agree on it and try to get a package in which we'd increase the rates in return for which we'd get some other concession. It didn't work all the time, but it worked once in a while. We were antagonists but never unfriendly with the labor people. We always got along very well with them. In fact, Neil Haggerty recommended me for a couple of appointments that I didn't want. [laughs]

Hicke: When the administration changed and Goodie [Goodwin] Knight became governor--

Kragen: That was '53, and I was here. I still represented the Retailers; that's the one thing I kept. But I didn't go up much. I didn't do the same sort of job. In fact, I had hired somebody at Loeb & Loeb to do the job I was doing. That didn't work out, and somebody in Gibson, Dunn & Crutcher took it over. I worked with them to some extent, but I didn't go up. Once I came here, I handled Retailers, but not the unemployment insurance work. I'd go up and advise them and things like that, but I only infrequently appeared before the legislature. I did a few times on particular cases for the Retailers, but not for unemployment insurance.

Hicke: In the years that you were spending a lot of time there, you must have seen quite a few changes in committee heads.

Kragen: Oh, yes, they changed all the time.

Hicke: Did you have trouble, then, getting to see people?

Kragen: No. That was one thing you did. You really cultivated access. That was the main thing that I think the campaign contribution really got you. In my own case, and Kennedy's and others, too, you got to know the people who were the secretaries or the administrative assistants. There weren't anywhere near as many as there are now. But you got to know them and got friendly with them. We did a lot of favors for them. Maybe somebody was retiring from the secretarial staff, and the lobbyists would fund a luncheon or a dinner, that type of thing. And they still do.

Even the pure labor votes, like Tommy [Thomas A.] Maloney from San Francisco, were always very friendly. I mean, I could always get in and talk to them, and once in a while convince them that labor really didn't have a big stake in this and ought to vote with us on something. Then I was in with Retailers' problems, too, after '46. I would go in and talk to them on proposals that were not unemployment insurance, that were Retailer bills involving sales tax, credit, shoplifting, etc. We have been involved in the bottle bills and the toxic waste bills, which caused our members a lot of problems.

Hicke: You mean returning bottles?

Kragen: Yes, that was always a problem. Now, with this recycling thing, we're still involved with it.

Shoplifting Legislation

Kragen: I drafted the major shoplifting legislation.

Hicke: Really? When was that?

Kragen: That was over fifteen years ago. It's the legislation where first we outlined the penalties, and also were able to get enacted what has been very effective--that is, the special provisions allowing you to collect damages from a parent of a child who shoplifted or from the adult who shoplifted. That's been a very effective thing.

Hicke: Does it have a bill number?

Kragen: It's Section 490.5 of the Penal Code.

Hicke: How did you happen to do that?

Kragen: Well, shoplifting was one of our babies. It wasn't really original. We had heard what had happened in other states with somewhat similar legislation. Much to our surprise, it was effective. Part of the legislation was adapting what some other states had, and the other part was putting in and making a little stronger language which the courts had previously given us, allowing us to detain an individual in a reasonable manner for a reasonable time.

Hicke: There was some case law?

Kragen: Yes, some case law that we'd relied on for years, and we hadn't been able to get the law into the statutes. We had the votes this particular time, and we enacted stronger language than was in the court's opinion. It's effective in some sense, but shoplifting is big business--and internal theft is big business. All retailers and wholesalers are hit by that.

Hicke: It's pretty hard, though, to get those clips off your clothes.

Kragen: That has caused us problems, because what happens on those is that, at least at times, the salespeople are rushed and don't do it. Somebody goes outside, and our people stop them. They're very polite and nice, and if we get the threat of a lawsuit we usually settle it. But sometimes you can't control these security people and they get sort of nasty, and we get threats of a pretty big lawsuit once in a while. There's a lot of those things, and there's a lot of time spent trying to train these people, and also to developing new types of things that make it easier to handle in that way. But it's a real problem. It's cost a lot of money to stores for settling. Because you don't want to try those cases, where somebody's paid for it and walked out.

But we do catch a lot of people walking out. I remember one instance I was involved with because there was another facet of it. A woman walked out, and I think she had five or seven dresses under her dress. They saw it. The question, basically, was whether it was an invasion of privacy to see what she was doing in the dressing room. Well, we had the dressing rooms built so our security people could look under

them just standing normally. The court went with us, holding that this was not an invasion of privacy. They do all sorts of things. They walk out with everything, and there's hundreds of millions of dollars lost to merchants.

Hicke: Somebody could make a fortune if they could invent a way to stop it completely.

Kragen: Oh, and how! The amount of money we spend on security personnel and systems--I haven't been out to Mervyn's lately, but in their place out in the Hayward area they had a system whereby in all of their stores--they had eighty stores then--from Texas to Oregon, if after the store was closed a door was opened, they could tell what door it was, where it was, and they had somebody they called immediately to check it.

Hicke: It was all on a computer?

Kragen: Yes, a computer system. The security committee on which I usually sat had a meeting and went out one day to look at that and a number of other developments. They had probably the most sophisticated system at that time--this was four or five years ago--that we had in the business. They could pinpoint shoplifting to some extent, but still you couldn't stop them.

Thoughts on Sacramento Period, 1944-1952

Hicke: Back to the legislature: you were primarily in Sacramento from '44 to '52?

Kragen: I was in Los Angeles, but when the legislature was in session I was up there with them. In those days the so-called long session was an unlimited session; they could go as long as they wanted in the even year. But what stopped them was that we didn't have air conditioning. By June 15 or June 20, those legislators were pushing to get out of Sacramento, which got us rid of a lot of bad legislation. [laughter] Air conditioning and the full-time legislature are the two worst things that ever happened to California, in my opinion. We've got too much legislation, 90 percent of which shouldn't be on the books.

Hicke: And we don't get what we need.

Kragen: That's right. But in those days we got through, and I was usually home by the 20th of June.

Hicke: I must admit I have often wondered what effect the climate in Washington, D. C., has had on our country.

Kragen: I think now, with air conditioning, you have a different attitude about staying around, working differently.

Hicke: Certainly you could think better, I would think.

Kragen: Sure.

Hicke: Are there any particularly memorable things that you can think of from that period in Sacramento?

Kragen: We usually always had battles on legislation of some sort, and there was a certain amount of excitement in the legislature. I remember another situation when labor was trying to put in the disability insurance, and we were against it because we thought that eventually we would have to pay for it. So we fought it and we killed it, we thought. I remember that two days before the end of the session I met Mary Ellen on the corner, and she said, "What about the disability bill?" I said, "The session's over." The next day they tacked it on to another bill and sneaked it through, and got it signed. [laughs] My statement that the session was over was completely cockeyed.

We had victories where we obtained legislation we wanted. And we had losses when legislation we wanted was defeated or legislation we opposed was enacted.

Hicke: Did you often furnish information, like statistics and so forth, to the committees?

Kragen: Yes, I furnished arguments of various sorts, which were culled from all sorts of sources. We had statisticians who would give me information, and I'd furnish it to the committee members. Usually before an important bill was going before a committee we'd go in and talk to those committee members who were our friends, who were for our legislation. We'd give them all the material we could to help them. Then I would get up and give the argument to the whole committees for or against a particular measure. Scully, representing labor, would do the opposite.

Hicke: So you would sort of debate the whole thing.

Kragen: Basically, yes. That's the way committee hearings are. You got up and stated the reasons why you thought the legislation was good or bad, answered questions from the various members of the committee, and answered the arguments by the opposing side, which was labor in my case.

Hicke: Other than Artie Samish, in general who were the most powerful lobbyists?

Kragen: Oh, I think Charlie Stevens from oil, and with the Retailers Kennedy was a very powerful lobbyist. [James] Garibaldi for the horse racing. Gari was very powerful. Colonel Blank for the telephone company had quite a bit of power. The telephone company people did a lot of wrong things. In fact, we had one case in which we were against some particular piece of legislation, and one of our senators who was with us came over to me one day and said, "Adrian, if you don't get that damned telephone company to stop having all its employees write me letters, I'm going to vote labor." They'd get these mass letters--they'd write these letters and have all the telephone operators and everybody copy it and send it in. We had some battles. They were more difficult than most of our industry lobbyists. There was a big ego there.

And the newspapers--except that you couldn't count on them for anything. A fellow named [John] Long was the newspaper lobbyist. Then there was a fellow from the Hearst papers whose name I don't remember. There were the two of them, and they were pretty arrogant. We'd use them when we needed them, and they were with us generally. But they were afraid of all the union problems, so they didn't outwardly support us very much.

Hicke: You still kept your hand in a little bit over the years, obviously.

Kragen: Oh, I talk to Shillito. I do it mostly on the telephone or by mail, but I still advise the Retailers and know a little bit about what is happening in Sacramento by reason of that. But I haven't been up to appear before the legislature for at least twenty years and maybe longer.

Hicke: Have you seen any changes in the methods of lobbying and so forth over the years?

Kragen: Not really. They're using a lot more electronic equipment to furnish information, and I think that over a period there's

been more dollar--I mean, we supported campaigns, no question about it, but the numbers of dollars have gone tremendously higher. I think they put much more emphasis on them than in our day.

Jim Corley, who represented the University, got a lot of things simply by reason of friendship. He didn't put in campaign money; the University didn't put in campaign money. You got to know people and rely on them. I think the money is much more important now.

Hicke: So it's a little more dehumanized now?

Kragen: I think so. I'm not there, but my feeling from watching it is that there's not the real leadership. I don't think Willie Brown and [David] Roberti exert the same sort of leadership that legislators like Bill Rich, Earl Desmond, Sam Collins, Gardiner Johnson, and others exerted in their day. From my vantage point, which is not the best, certainly, I don't see that there's that same--I don't think that, faced with the same situation, Brown or Roberti would be able to get the votes that these men got in the situations that they faced. I think they were better leaders, in my opinion.

Hicke: So that explains some of the problems?

Kragen: I think possibly. And a full-time legislator is different from a part-time legislator. You know, you've got something else you're relying on; you're not relying on that five hundred dollars, or whatever they were getting. You're doing some other things. And the few legislators who did rely on the legislature for their livelihood, in effect, were people who in the general run were disregarded by the majority. That's my feeling. I don't know.

Clients of the Loeb & Loeb Office

Hicke: Let's go back to Loeb & Loeb. Can you tell me a little bit about your tax practice there?

Kragen: Well, it wasn't, in a sense, a big-time tax practice. We did some corporate tax, and we did a lot of individual tax for people in the motion picture industry and the bank people and others.

Hicke: Are you talking about tax returns?

Kragen: No, I didn't do tax returns. I think the office did some tax returns, but I didn't do any. But advising or handling matters. Somebody would get a deficiency assessed against them, and we'd handle it. A lot of what I did was advise in relation to deals that were taking place.

Hicke: The tax aspects?

Kragen: Yes. And then any tax litigation I handled; the other people in the office didn't handle it. As I say, I was away most of the time, so there couldn't have been a lot to do. It wasn't that much. They never developed, in my day, what I consider a really solid tax practice. They had for so many years sent the tax work elsewhere, so that the people who would have relied on them for tax advice were used to going elsewhere. New clients I represented, but I never did think we had what I considered a big-time tax practice.

Hicke: Who were some of the clients?

Kragen: We represented the eight major motion picture studios. With this weekly retainer they paid for my services--the eight majors and the Motion Picture Producers Association. In addition to going to Sacramento, I met with the controllers of each of the studios as a controllers' committee. I met with them frequently and advised them and handled matters, and then did some test cases for them on various things. Then I met with the ones for whom the office was general counsel--Metro [Goldwyn-Mayer], Republic, Universal [Pictures]. I met with those controllers regularly if there were any tax problems.

But a lot of the tax work for the motion picture industry was handled out of New York, because that's where the finance and the presidents of most of the companies were. I handled tax problems relating to production. For example, I went East and negotiated with the IRS on loan-out of actors. A studio would loan someone to another studio. The problem of loan-outs from foreign studios was what I obtained a ruling on from the producers.

Hicke: Loan-outs to the American studios?

Kragen: Yes. It was a question of whether the money that was paid to the studio was subject to individual income tax in the hands of the artist.

Hicke: That's an interesting question.

Kragen: I got a ruling that it wasn't.

Hicke: But wasn't there an opera star who couldn't come back to the United States for years because she hadn't paid U.S. income tax?

Kragen: There may have been. But they've changed some of the things. We had a big problem with England, because our people who were full time in the English branches or subsidiaries didn't pay any taxes to England and didn't pay any taxes to the United States on their salary because of a peculiarity of English law and U. S. law. We negotiated a settlement on that--well, I persuaded them; it wasn't negotiated. They were trying to assess them, and we persuaded them that the law provided that there could be no assessment under the circumstances.

Hicke: Who was trying to assess?

Kragen: The U.S. government. I did things like that. Then we had other clients. We represented the Union Bank, and once in a while something would come up on taxes.

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Kragen: We'd represent them in some tax problems they'd have, or their individual officers might have.

And we represented Given Machinery--I don't know if it's even in business anymore--which was big on things like washing machines and appliances of that type. It was a big manufacturer in Los Angeles. We always had some tax problems to handle for them.

We represented outfits like Ready-to-Bake, which I represented personally. They made these refrigerated biscuits and that sort of thing. I handled everything; I really was their lawyer, and I shifted the work that I didn't do to other people. But they relied on me. In fact, they wanted me to go with them as an employee. Financially it would have been a very good deal, but I decided I didn't want to.

Motion Picture People: Glamorous?

Kragen: We had lots of individuals that we represented on various things. For example, I represented Lili Damita Flynn. We represented her in the divorce from Errol [Flynn]. There was a very big tax problem in relation to the alimony provision, and I represented her on that. And there were others who had tax problems. When Ty[rone] Power got his divorce from Anabella, there was a tax problem, and I did the tax work on it. That type of thing.

Hicke: It sounds a little glamorous.

Kragen: Early in my career down there I decided one thing: that I couldn't live on the same scale as these motion picture people I dealt with mostly. So, except for some of the controllers, who were business people, my family never met any of the motion picture people until we came back up here. When some of them with whom I had become friendly came up here to do a show or a picture or something, we'd have them over or we'd take them out. My wife met them then; that was the first time she'd met them.

One of the funniest early stories: I said I was being paid \$16,000 to start down there, which in 1944 was a lot of money. I thought it was all the money in the country. I'd say [I'd been there] about three weeks when Edwin Loeb said, "Cary Grant is doing a one-picture deal with Metro and there's a tax problem. Floyd Hendrickson"--who was the head of contracts for Metro--"would like you to sit in." So I went out, and all my illusions about my \$16,000 went very quickly. Because Cary Grant was getting more per week than I was per year. [laughter] So I didn't think I was making so much money any more.

Hicke: What were some of those people like in the flesh?

Kragen: Well, a lot of them were very nice. Some of them weren't. For example, we represented a lot of actors whom we, in effect, didn't represent. That is, we did the work and the studio paid the bill, but the actor never paid us anything. Like Clark Gable--we did some work for Clark. I met Clark in Hendrickson's office. I'd been down there maybe three or four months, and my mother was coming down for the first time since we'd moved down. I told Floyd that my mother was coming down, and I'd like to take her to lunch in the studio



Stevie Wonder and his mother; Adrian Kragen, Billie Kragen, and Ken Kragen, 1986.

Photograph by Michael Jacobs Photojournalism

commissary and have somebody give her a tour of the studio. Floyd said sure, fine, he would arrange for it.

So on this particular day I brought my mother out and we went into the studio. I had to work out there all afternoon, so I brought her into the commissary and we were going to have lunch. Gable had been in the office when I was asking Hendrickson, and he came over and said, "Mrs. Kragen, your son said you were coming down," and he shook her hand. My mother was-- [laughter]. He did things like that.

Eddie Mannix, who was vice president of Metro, was a real tough guy. He'd actually been brought out there originally--this is the story I got, second hand--because he'd been one of the gang who'd done vandalism in Palisades Park in New Jersey that Mayer and Schenk had operated. So Mayer, being a very smart man, hired Mannix as the bouncer at the park. Then when he came out to Metro to start Mission Studios originally, he brought Eddie Mannix with him. Eddie was with him all the time; he was the vice president. And he was a very smart man in lots of ways, but very tough.

On the other hand, I won a case, Loews v. Department of Employment, which was a very big case for the industry. At the Motion Pictures Producers Association meeting I was reporting on it. I attended all the meetings, and I reported on anything that was happening. Mannix, who had never seen the briefs on the case or anything about it, said after I reported it, "You know, gentlemen, I read those briefs in that case, and they're the finest briefs I ever read in my life." He never read a brief; he never read the damned things. But he was trying to be nice to me! Lots of them [were like that].

My favorite, of course, was Deborah Kerr, whom I personally represented from the day she came to the United States until I left. In fact, I represented her later. I'd see her, and I correspond with her infrequently now. I think the last time I wrote her a note and she wrote me a reply was when my wife died. I wrote to tell her about that because she'd been very friendly to my wife after we'd left the industry. My wife first met her when she came up here to do "Tea and Sympathy." We gave a cocktail party for her, took her to dinner, took care of the kids, and did some other things.

Hicke: How did you represent her?

Kragen: Generally. Her people in Britain, when she came over, had asked me to meet with her. We were her general counsel on everything. The firm did most of the work; I did a few tax things. But I became very friendly with her. I loved her. My wife said she was the only woman she had ever seen that she thought I would leave her for. [laughter]

Hicke: The firm also represented the Los Angeles Stock Exchange.

Kragen: Not in my day. They were the big Jewish law firm. You know, the Jewish law students had real trouble getting jobs. Like O'Melveny & Myers wouldn't hire any Jews in those days, and Gibson, Dunn & Crutcher, basically never. All the Jewish students came to us. There was the Silberberg firm and a couple of others that were heavily Jewish, but about 80 percent of our firm was Jewish. A lot of the clients came out of the very wealthy Jewish community down there. So we represented a lot of individuals.

One time, before my day, Edwin Loeb personally represented the entire motion picture industry--everybody; I mean, all of the producers--until they had a big battle between Warner's and Metro, before my day. But I still represented all eight majors on this special assignment; they paid a weekly retainer.

One of the funny stories I heard--this is also second-hand--was that Edwin and Joe Loeb represented Universal Pictures--Carl Laemmle. Laemmle had some sort of a problem with his new little studio, Mission Studios, which L. B. Mayer ran. Edwin Loeb negotiated a settlement of it, and Mayer was so impressed with him that he asked Loeb to come out and talk to him, and he asked him to represent Mission Studios as general counsel. Edwin Loeb was an effervescent playboy type, somewhat, but very smart on deals; and Joe Loeb was a conservative, very practical lawyer. Mayer called Laemmle and got clearance, and Edwin came back to the office and said to Joe, "We've got a new client, Joe." Joe asked who, and he said, "Mission Studios." Joe asked, "How much are we getting paid?" Edwin said, "Two hundred dollars." Joe said, "Two hundred dollars a year, or two hundred dollars a month? What do you mean? Which?" Edwin said, "Two hundred a month, of course."

Well, the first week, two hundred dollars came in from Mission; the second week, two hundred dollars. We were on a weekly basis on lots of things, but we'd been getting five hundred dollars a month, I was told, from Universal. So

after about the third week of these Mission [payments], Edwin called Laemmle and said, "Carl, I've been looking over our books. Your controller's just been sending us five hundred dollars a month as our retainer. Our retainer is five hundred dollars a week, isn't it?" Laemmle said, "Of course."

Now, the truth of this story, I don't know. But I was told it as if it were gospel. And I could believe it, because of the way the industry worked.

Hicke: It sounds like it was kind of fun.

Kragen: Oh, it was fascinating in lots of ways. I worked with a lot of the industry executives as well as actors and directors and others. I represented a number of them on some cases. It was fascinating, but it was very demanding, and none of them really had any regard for your own life. I mean, time meant nothing.

Work in New York and Washington, D.C.

Kragen: In 1950 we were trying to do a picture down in the Virgin Islands, and I couldn't get any answers on the tax questions we needed to get resolved. So Twentieth Century told me to go to the Virgin Islands and sit down with the people and talk about it. So I did. I left on New Year's night, flew to New York, and met with the New York lawyers, as I always had to do before I did anything, really. Then I flew down to San Juan and then to Charlotte Amalie. I worked really day and night for four days, and I got the laws amended, got rulings, I got everything we needed. Because they wanted this picture done. It was a picture about diving, and Magens Bay there has the clearest water where you can film right through it.

So everything they needed I was getting settled. My wife couldn't go with me, but I was intending to take a few days off, when I got a cable saying, "Immediately upon completing your work, come back. We have a problem." I got back at five in the morning, went back to sleep for a while. About ten o'clock I got out to the studio. Jack Codd was the man I worked with out there, and I sat down and told him what had happened, what we had done, and how everything was working fine. He said, "Yes, we've got you on the afternoon

plane to Australia." Before I left we were doing a picture out there, and we were having big problems with blocked currency and a tax that they wanted to levy. He said, "We want you to go out there. We think it's the best way."

I said, "Cancel the ticket. I'm not going to go there. I think I can settle this on the telephone, and I'm going to do it that way." I never did go, but I did settle it on the telephone. But that's the way they were. I could hardly see straight, much less fly out to Australia. In those days, you know, you were flying prop [propeller] planes. And they'd call you in the middle of the night; there was no warning. My wife always said that she thought if I had stayed down there I would have been dead twenty years before. Because you were pushing all the time.

When I was away I would come home on Saturday morning, every few weeks when I was in Sacramento or Washington. I'd go down to the office and work all day in the office, come home, and my wife wanted to go out. I hadn't seen her for two or three weeks, so we'd go out. The next day I'd go to work, and the next evening I was back on my way to Sacramento or Washington.

Hicke: What were you doing in Washington?

Kragen: Same thing. Once in a while on a particular piece of legislation, but mostly on rulings or problems with the IRS [Internal Revenue Service], and all sorts of things. I did a lot of things for other people in Washington, but on anything you did for the motion picture industry you had to go to New York and clear with the lawyers first. I got so that I knew them well and they had confidence in me and we had no problems.

But one of the problems was that when the head of the studio, especially Nick Schenk, would hear I was coming [to New York] on the way to Washington, he'd want to talk to me. I'd go and see Nick, because you couldn't say no. Nick Schenk was chairman of the board of Metro, and he'd want to know what I was doing. "Oh, I'm going to call my friend," who was always the commissioner; it was always a political appointee in those days. I didn't want anything to do with the commissioner! But he'd have to call the commissioner, "Our lawyer from Los Angeles is coming down. He's got a problem with the IRS. I'd like to see you take care of him," and so forth. [laughs] I didn't want anything to do with him! But I couldn't avoid it.

Hicke: So how would you handle that?

Kragen: Well, I'd go in and see the commissioner. First I'd go in and see the people I had to work with, and I'd tell them the story. Then I'd say, "Look, I'm going to just pay a courtesy call on the commissioner, and I'll be back with you." Because the commissioners weren't anxious to do anything, either.

But mostly I was in Sacramento a lot. We did a lot of State of California matters, although we did quite a bit of IRS problems.

Hicke: You've talked a little bit about Joe and Ed Loeb. Another early member of the firm was Irving Walker. Was he still there when you were there?

Kragen: Irving Walker had left before I came down.

Hicke: Earl Adams?

Kragen: Earl Adams had left before I came down. They had gone and formed a firm which eventually became Adams, Duque & Hazeltine. I got to know Irving, and I got to know Henry Duque, but they had gone from Loeb & Loeb before I came.

Hicke: George Cohen?

Kragen: George Cohen was there for most of the time. He left maybe two or three years before I did. He was a graduate of Boalt, and he had been with them thirty-five years. He was a fine lawyer, a very fine motion picture lawyer. He came in to Edwin and said, "I've been with you a long time." He was a senior partner, of course. He said, "I think I ought to have my name in the firm." Edwin Loeb said, "We once had Irving Walker's name in the firm and it didn't work out." It was Loeb, Walker, and Loeb in those days. He said, "We're not going to do it again." And George Cohen left, and took part of the Metro account. He could have taken it all, I think, if he'd wanted to. He was really the man who worked mostly with Metro on all of the contract stuff, and he was close to Mayer and Mannix and George Sidney and all the rest of the people.

So he left and formed a little one-man firm of his own. Later Les Roth came in with him, I think, and I think they hired one or two young people.

Hicke: What happened to Loeb, Walker, and Loeb?

Kragen: Well, Walker left and they made it Loeb & Loeb. I don't know what the problem was. It was before my time.

Herman Selvin

Hicke: Herman Selvin?

Kragen: Herman was there, of course. Herm wasn't there when I first went down because he was still in the navy. I had not known Herm, but I had known of him. Because when I was with the attorney general I argued cases every session of the court. I had lunch with Roger Traynor at least once a week when I was in town, and quite frequently Phil Gibson, who was the chief justice, came with him. One day I was at lunch and we were talking. I said to Phil, "You know, I argue a lot of cases before your court. I'd like to have any ideas you have"--Roger had already talked to me--"on ways I can improve my presentation to the court." Gibson said, "Well, I have one suggestion. There's a fellow named Herman Selvin, who is now in the navy. But when he gets back and starts arguing cases before our court, you just come in and listen to him." I had never heard of Herman before.

Hicke: That's a pretty high recommendation, isn't it?

Kragen: Oh, he was the best lawyer I've ever known. He was the best litigator and appellate lawyer. Of course, he worked tremendously hard.

Hicke: Why was he the best? How was he the best?

Kragen: He had a better command, a better ability to analyze facts in law, a better way to present it. He argued lots of cases before the supreme court and appellate courts. He argued without a note. He had such a tremendous memory, and he'd read everything and knew and analyzed everything. Surprisingly, his first case before the Supreme Court of the United States was not until about '49 or so. He went and argued a case then in the Supreme Court of the United States. One of the judges on the Supreme Court (whose name I can't recall) came out to Los Angeles and was picked up by another lawyer, Charles Beardsley, whom he knew. Charlie said to the

judge (this is the story Charlie told me), "Justice, what would you like to do?" He said, "One thing I want to do is sit down and meet and talk to Herman Selvin. He made the best argument that has been made in the whole time I have been on the Supreme Court."

He was just a tremendous lawyer. He worked and played hard. We were quite close because we were both very enamored of the University of California's athletic program. We both went to anything we could. We went down there, and we came up here when we could. So we became very close friends. He would work four or five nights, nearly all night. Then on the fifth night, when he was finished--let's say on a Friday night, when there wasn't a court hearing the next day--I'd be in the office and he'd come in and ask, "What are you doing tonight?" I'd say I was just going to go home and have dinner, and he'd say, "Well, let's go out. We'll get Billie and we'll go out." His wife had been an actress, a Goldwyn Girl, and she lived her own life. They were very close; there wasn't any rift, really.

They had a real problem, because his son was born when he was in the navy, and when he came back he found that his son had a mental problem. He was, and still is, I think, if he's still living, in mental institutions most of his life. It was their only child, and Herman loved children. He loved my kids.

So Herman, Billie, and I would go out on the town. I could never keep up with him, but that's the way he was. He worked hard, and then he'd want to play hard.

His father was, I think, from Russia, and came to Utah to the little town of Tuilla. He had a little general store and eventually became elected to the Utah legislature. One time he was the citizen of the year in Utah. A little, tiny fellow. He came out and visited and I got to know him.

But Herman was just a tremendous lawyer, and a wonderful person.

Hicke: Was he primarily a litigator?

Kragen: Yes, although he did a lot of advising. Because, you know, people just demanded him. When he left Loeb & Loeb he could have gone anywhere he wanted. He went to a firm in Beverly Hills.

Hicke: Milton Schwartz?

Kragen: Milt was there. He was head of the litigation department while I was there. He retired shortly after I left. I never saw Milton try a case. I've sat in on Herman's case trials, but I never saw a Milton trial. He was regarded as a very good litigator. By the time I got there he wasn't working that hard.

Distribution of the Workload

Kragen: One of the problems at the Loeb office was that it was sort of a country club. A lot of the people didn't work. I became managing partner one time, and I brought in a proposal to the partnership to cut the size of the firm from forty-two to twenty-four or so and get rid of certain clients. It would have meant more work for everybody, but lots more money. Because I didn't think we were making enough money for the firm in our setup. I didn't get a single vote besides my own. Nobody wanted to cut down. Nobody wanted to do any more work, that was the whole problem!

Hicke: How were you going to cut it down, by retiring some of the older--?

Kragen: No, we had associates. Our kids we could place anywhere. We had about sixteen partners, and we were going to keep about seven or eight associates and gradually get rid of the rest.

Hicke: Then the partners would have to do more.

Kragen: Yes, that's right. Because we had partners who I didn't think did anything, or comparatively little. Because I was working very hard, and Selvin worked very hard, and a few of our other people worked very hard. My colleague as a tax partner got interested in writing a book on philosophy, and he got interested in a system for playing the races. He was brilliant, as good a tax mind as I've ever known, but he would never work hard. He'd shift all the stuff to me.

Hicke: Those were probably the days when the distributions of income were not based on the amount of work you did, but on seniority.

Kragen: There were the two Loeb's, and then there was a group of about six or eight of us who were senior tax partners who all got the same amount. And then there were the junior tax partners, and they all got the same amount. That's one of the reasons Selvin finally left. He was bringing in and doing twice as much work as anybody else and not getting any more--not getting as much money as the Loeb's. But Edwin Loeb had died, and Herm's loyalty was to him. In fact, Herman and I talked about forming a firm. But Edwin Loeb had been so good to him earlier, during the war, that he decided he just couldn't do it.

Hicke: Was there anybody else there that you can recall?

Kragen: Carl Levy was really a very bright and hard-working lawyer who handled the probate and real estate work. Very bright, very nice fellow. And Maurice Benjamin, who handled the Motion Picture Producers Association, basically, and didn't do much else. He was one of the fellows who had lots of ability and never worked very hard. He didn't bring in anything near what we paid out for him.

Hicke: And nobody but you objected to this?

Kragen: They may have objected, but nobody did anything. They just didn't want to change--well, they didn't want to cut the size of the firm. We were the second largest firm at that time. There were all sorts of reasons, but I didn't get any support.

Hicke: Was there anything else during your time as managing partner?

Kragen: You know, managing partner was a problem. The only reason I was managing partner was because Edwin Loeb, who was managing partner the whole life of the firm, decided it was an imposition on him to continue as managing partner. So Carl Levy and I were made joint managing partners, and actually I took on most of the work.

One of the first things I did--we were getting badly treated by, especially, the older secretaries. They would bring their lunch, eat it in the little lunch room for an hour, and then take an hour to go out to lunch! So I stopped it. These gals went to Edwin Loeb immediately--

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Kragen: --and my rule was countermanded. I mean, that was the problem. I was the managing partner, because actually Carl didn't want to do very much. I'd consult him on important things. But anything that Edwin Loeb wanted to do that really the managing partner should do, Edwin did! So I took that the year there was the short legislative session. I served most of the rest of that year, and towards the end I said, "Well, I've got to go to Sacramento. I can't do this," and got out of it. I only served about six or eight months as managing partner.

Hicke: It sounds like a frustrating experience.

Kragen: Yes, it was terribly frustrating. And I had a lot of work to do, anyway, and that was just an added burden to have all these memos and stuff coming to me. Subsequently they hired a nonlawyer from Sullivan and Cromwell (I can't remember his name), I guess when I said I couldn't do it any longer.

Hicke: That was pretty early to hire a nonlawyer as a managing partner.

Kragen: I can't remember whether he stayed. I have a vague recollection that he stayed a while and then left and somebody else came.

Hicke: Next time let's start with why you left Loeb & Loeb and came up here.

Kragen: I left Loeb & Loeb because I had done everything I thought I could do [laughs], and I got an offer to come up here. And my wife wanted to. I mean, she took all the burden, because I took a 75 percent cut in income. She went from full-time help and money for anything she wanted, to where she had nobody to help and we had to watch it very closely.

Hicke: But happy to be back here.

Kragen: Her family was here, and we'd both gone to school here. And she loved the University. She was very active in a lot of aspects of University wives and faculty wives. She was very active in all sorts of things, and loved it. She just liked this area and liked the people, and they liked her.

Sam Taylor; California Retailers Association and Credit Acts

[Interview 4: August 15, 1989]###

Hicke: I'd like to start this morning by going back and asking you about Sam Taylor. You said that you knew him, and that he was a well-known tax lawyer.

Kragen: Yes, he was. He came out to California, I think, working for the Reconstruction Finance Corporation (RFC) as a bond lawyer of some sort. I can't remember whether he went with the IRS for a short while or if he went straight into his own practice and specialized in taxes. That's what he did. I haven't seen Sam for, I guess, two years now.

Hicke: He practiced in San Francisco?

Kragen: Yes. He was supposed to come to Los Angeles with me, and he changed his mind at the last minute.

Hicke: What did he do?

Kragen: He went with Heller, Ehrman, White & McAuliffe for a while, and then he went on his own. Then he founded a firm, Taylor, Winoker and something. That lasted for quite a few years, in fact until he was in his seventies somewhere. Then there was a breakup and he went on his own and stayed on his own with one assistant.

Hicke: Why was he well known?

Kragen: He represented a lot of companies on tax work. He was a well-known tax lawyer in the area. He did a lot of work. It wasn't that he had done anything spectacular. You know, in the days when he started there weren't many straight tax lawyers. Somebody who specialized only in taxes was very unusual. There were, oh, maybe a half a dozen people in San Francisco who were not part of a firm and were specializing in taxes, and he was one of them.

Hicke: That doesn't seem like very many, considering that during the war probably--

Kragen: Yes, that's when our heavy tax problems really started.

Hicke: When you were in Sacramento, did you have anything to do with the Retail Installment Credit Act in '59?¹ Was that something the Retailers were interested in?

Kragen: I can't remember it. We were much involved, and had been all the time [in every credit bill], although I personally do not do much on it; we hired a man named Kaiser as an expert, and we've hired people who were experts on credit.

Hicke: Was this at Loeb & Loeb?

Kragen: No, this is at the California Retailers. We are very interested, and have been all the way along, in the amount of the interest charge on credit sales. Now we have, for a time, no limit. But we have been involved in every credit bill, although I have been only peripherally involved. There are some very technical things on the question of what credit does and what higher interest rates do as far as credit and the competition. We hired a man from Texas for a while who had specialized, a professor. Then we hired this man Kaiser for a while; he has died now. So I've been involved, but really not directly.

Hicke: This act is one that Jesse Unruh had his name on. It was called the Unruh Act at the time.

Kragen: There's been a whole slew of those credit acts--or changes in the credit. Every year there's a fight on it.

Hicke: What are the issues?

Kragen: There are two main issues. One is the issue of what rates you're allowed to charge. That's the big issue. The second issue is a question of discrimination in the granting of credit, which comes up from time to time. I don't think it was up this last time at all. It's similar to redlining in the home mortgage business. Although we've never had, really, anybody question our group, the Retailers, as such. But there was a big battle relating to the furniture dealers on the way they were granting credit and what they were doing with it, and things of that sort from time to time.

Hicke: Would there have been discrimination against women, for instance?

¹"Unruh Act," 1959 Reg. Sess., Cal. Stat. ch. 201 (A.B. 5001- retail installment credit).

Kragen: Not so much against women, but mainly against the minorities, was the argument. And then there was the other argument that they were taking advantage of the minorities, selling items they couldn't afford, or using bait and switch tactics. Those things came up, but that end of it was really never our problem. None of our people were ever directly involved in that.

At Loeb & Loeb: Extras, and Representation of Central Casting

Kragen: With Loeb & Loeb, I think I've told you everything. I told you about Ronald Reagan when he was president of the Screen Actors Guild. I think I told you about extras and representation of Central Casting.

Hicke: And bringing them in from other places?

Kragen: Central Casting was the hiring agent of the studios for extras; all extras were hired through Central Casting. I represented Central Casting, among other things.

Hicke: Is that a company?

Kragen: Central Casting is an organization set up by the studios. I don't know the form of its corporate organization. It had a staff, and during my time a man named Howard Philbrick was the head of it. He's the one I worked with. A lot of things involving extras came to me, largely because one of the most important things we had with extras was their claims for unemployment insurance, which was part of the area I handled. Because I had so much to do with that, when Howard wanted any advice on other problems relating to extras, he came to me with them.

I don't know whether I told you about Metro-Goldwyn-Mayer and the extras.

Hicke: I don't think so.

Kragen: It's sort of typical of the type of thing. There were a lot of old-time extras that had been in the industry for years. When sound came in, for some reason Metro decided they weren't going to use these old-timers anymore. They lived

near Metro, and at least one of them had a house right behind a large portion of the back lot of Metro. Whenever Metro started to do sound movies outside, they would gather there with pots and pans and make noise [laughter]. Finally, Metro started hiring them again.

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Kragen: The extras would come in to hearings on unemployment insurance matters, and they'd always bring pictures of themselves with stars. None of them had ever done anything very much. In the extra business you had a basic rate for an extra, which in my time was five dollars a day.

Hicke: For all of them?

Kragen: That's everybody. But if you did what we call "business"-- you had to walk alone somewhere or do something like that-- you got a higher rate. If your work was near water you got wet pay. If you had to climb a ladder or any steps there was hazard pay. And if it took a certain amount of time over the regular time, you had regular overtime. At another stage, which I don't remember exactly, it was what they called "golden hours" because it was triple pay.

I remember when wage and hour legislation came in in the forties--it was during the war--we had a man who was really working that out come to a meeting with the Central Casting people and the controllers to explain to us how we would figure for wage and hour determinations pay. He had a big blackboard, and he took one person who could have had all these extra assignments, and it took the whole blackboard to illustrate how you'd figure that one person's pay [laughs]. And we didn't have computers in those days.

It was fun watching the extras. They had various categories. One category was "racials"--that is, blacks, chicanos, Orientals, etc. And then you had people with special things--people who were 350 pounds or people who were very small. All these extra categories were set up. But normally for any scene you hired white males or females. There was no discrimination on females, because we had lots of females. But if you were black or Oriental or something, your chances of getting in, except where there was a need for it in a particular picture, were slight.

Hicke: All that has changed now.

Kragen: Oh, yes, it must have changed. I left before real changes had taken place.

Hicke: Did you have problems with some of those people who were charging discrimination?

Kragen: No. I mean, there were complaints. Some people would yell, "Why don't I get a job?" They'd come in to Howard or to one of his assistants. But nobody filed a lawsuit or anything during my time.

We had a list of extras, and you had extra calls. It was quite different then--my grandson was an extra here at Berkeley during the summer. They were filming a picture on the life of Robert Oppenheimer. He heard about it, and he went out. He got a job for one day as an extra, as a student. They paid him sixty dollars.

Ronald Reagan, Screen Actors Guild

Hicke: What was the Ronald Reagan story? I don't know if you told me that or not.

Kragen: The first time I ever met Ronald Reagan, I represented the Motion Picture Producers' Association. One of the things I did was to work with Charlie Boren, who was a labor relations man. We did the good guy-bad guy thing. We would be in negotiation and Charlie would say, "Gee, I'd love to give you that," and I'd say, "No, you can't." This particular day he wanted me to go with him to the Screen Actors Guild offices for preliminary talks, and we were going to meet Ronald Reagan, who was the president of the Screen Actors Guild at that time.

I'd never met Reagan. Charlie was driving, and he turned to me and said, "You want to remember one thing, Adrian. This Reagan is a wild-eyed radical." My first meeting with Ronald Reagan!

In the Loeb office I met a lot of people, a lot of stars and a lot of non-stars. It was fun. But I worked so much and so hard that I was willing, when I got the offer, to come here.

Awarded to Adrian Kra
in 1973 upon his reti
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V TAX LAW

Overview of California Tax Law

Hicke: Maybe this is a good time to get your overview of the tax laws in California. A little historical background--

Kragen: Well, we've probably got the most complicated--or the most complete, whichever you want to call it--set of tax laws of any state in the country. We have more different tax laws than anybody else, and I'm sure now (I haven't looked at the figures lately) we collect more from taxes than any state in the country.

Hicke: How do you account for the fact that it's more complicated in California?

Kragen: Simply because--and we're mainly talking about income tax now--in that regard we have never been completely willing to conform to the federal. When you're handling tax returns or tax problems, the federals have one rule--although we conform much more in the last two years, since the '86 act;¹ we're much closer to conformity, but not completely conformed. Where it costs too much, we didn't conform. For example, until very recently (until '86), we had a different capital gains structure than the federal. Basically the principle was the same, but the way it operated was different. So that if you had a lot of capital gain transactions, you had to keep, in effect, two sets of books, one for California and one for the federal.

¹Tax Reform Act of 1986, 100 Stat. 2085 (1986).

I think the California system was better, and that's the one that's really being considered federally right now, if they're going to bring back special treatment of capital gains. But I argued with the people, when I went up, that even if it was better, conformity was much more important. The feds either had six months or a year, depending on what period you were involved with--because they changed it--as the test period for treatment as capital gains. California went in one to five years, five to ten years, and over ten years, and different, lower recognition as you held it longer, which is the basic principle of the whole theory of capital gains. That because you've held it longer, the appreciation has gone on over a longer period, and therefore you oughtn't to tax it all at once, in effect, at the same rate as others.

Hicke: You're saying that if you have a stock, for instance, that you bought twenty years ago, you should pay less capital gains now than if you had sold it in five years?

Kragen: Yes, or in six months, as the feds. If you sell in six months, why should you get any better treatment? It's within the year. But the problem with California was that in a number of other areas, we didn't have conformity. We had basically the same in a lot of the provisions, but a different system for corporate tax. We have what we call a franchise tax. We had a corporate income tax, too, but a corporate franchise tax for most of the corporations. And we had the unitary system, you know, and all that stuff that complicated our system a lot. Then we had a lot of others: we have a sales and use tax; we have things like a private car tax, which relates to freight cars going through the thing.

Importance of Tax Courses in Law School

Then we have the problem on the property tax. The statewide properties, like the utilities, are assessed at a state level, whereas all other property is assessed at a local level for property tax. I mean, all these things make it a system that--and I've been screaming at the school here, because since Professor [Sho] Sato died we've only tried once to give state and local taxation as a course. It's increasingly important, I think, but you don't get the

interest. Tax courses generally haven't got the interest for the students that they had ten years ago.

Hicke: Why is that?

Kragen: I think there are a couple of reasons. One is the proliferation of courses. Secondly, it's a very hard subject, and a lot of people don't like to face it. Thirdly, there is the mistaken assumption by people that they don't need it. They're going to practice criminal law, family law. You know, I just read a case this week where if the criminal lawyer had known his tax law he would have saved his client a couple hundred thousand dollars. He had the thing handled in a way that made it nondeductible, whereas it could have been deductible.

This was an embezzler, and the court ordered restitution. The question was whether this was a deductible item. There's a provision in the federal tax code which covers fines and penalties paid to the government. They said this was the equivalent; it was ordered by the court and was equivalent to a fine paid to the government and therefore nondeductible. Now, it's a little expansion of the language of the statute, but on the other hand it would have been very easy to make an agreement and not have it as a court order.

And family law--the big thing in family law is the tax consequences of various transactions. I think you need to have basic tax, not necessarily corporate. But one-third of the class doesn't take it at all, and that's true nationwide, the dean says. I don't know; I've never checked it.

Hicke: People who are in probate and real estate and so forth need a basic knowledge, don't they?

Kragen: Oh, yes. Anybody in probate work has to know taxes or have somebody with them who does know, because there's just so much material. And you can foul it up so easily and cost your client a lot of money. Drawing a will--I mean, I just talk to people. I get out there in the swimming pool at Rossmoor, and they know I'm a lawyer. A man spoke to me, and he sounded as if he was a man of some means. I told him, "Look, I can't tell you that, but when did you have your last will done?" He said about twelve or fifteen years ago. I said he'd better go to a lawyer and have it looked at, because the changes are such that he can really cost his estate a lot of money if he doesn't have it looked at since the '86 act. He may not have to change, I don't know; I

didn't want to inquire. [laughs] I don't want to get involved with these people. I don't do that sort of thing anyway, and I don't do any consulting work any more.

Hicke: This proliferation of California taxes all over the area--is that because tax laws are used for policy making?

Kragen: Oh, I think sometimes, but basically it's a revenue. These are basically revenue measures. There are some, like the highway tax and provisions to try to reduce the pollution and pay for it by tax levies. And there are some other things. But our big revenue monies are sales use tax, the income tax, and the local property taxes; and business license taxes are big in local areas. These are all revenue measures.

Hicke: You said California collects more than most states.

Kragen: I haven't looked at the figures for a long time, but I would think California collects a lot more tax revenue than any other state. The only state that would come close would be New York.

Hicke: Is that because of the number of people?

Kragen: Yes, and the rates. New York has some higher rates than we do, or at least they did; as I say, I haven't taught state tax law or really practiced it much for quite a while.

History of Taxes in California, 1930-1940

Hicke: Let's go back and talk about how some of these got started. What was the situation for California taxes in the 1930s?

Kragen: In the thirties we had an income tax, but it was a one percent rate, as I remember it. But in the thirties, right in the Depression period, we needed revenue. What we came up with was the sales tax, and that was followed--because people were going out of the state and buying--by the use tax. For a while those were the largest source of revenue. The last figures I looked at, which was a couple of years ago, the income taxes were the largest source of revenue. I'm not sure exactly, but they're both quite large.

Nothing else brings in any appreciable amount. Property tax, of course, does the best for the local governments--all

the property taxes, whether assessed by the State Board of Equalization or by local governments.

Hicke: Then during the forties what happened?

Kragen: Well, in the forties we consolidated things, largely. One of the things that happened in the forties was a proliferation of local sales taxes. We at one time had, I think, three hundred different ordinances for local sales taxes, and it drove us nuts. It especially drove my clients, the Retailers, nuts.

And the League of California Cities was interested in doing something, so I drafted, with [Richard] Bud Carpenter of the Cities, what is now known as the Bradley/Burns Sales Tax Bill, which brought the local sales taxes, in effect, under the state. Now the state collects all the sales tax, and the part that is not state-determined is then distributed to the counties and cities, depending on how much was collected from those areas. But you only file one tax return nowadays. Sears Roebuck, which was one of our members, filed one year three hundred tax returns. And they were different. Like, Fresno exempted work pants or work clothes. Somebody else exempted agricultural implements. [laughs] Each one was a little different.

[Clark] Bradley and [Hugh M.] Burns were the senators whose names were on the thing, and it's still called the Bradley/Burns Bill. It was instantly effective. We had a couple of problems. The first was the City and County of San Francisco, which refused to come in; it was a voluntary thing--voluntary except that if you didn't come in, your people were paying double. I think it started with one percent. We gave credit for a one-percent levy on the cities if the city was in the compact. If the city wasn't in the compact, they collected one percent and the state collected one percent.

So San Francisco didn't come in. It was very important that it come in, so we met with them and found that the reason was twenty-three employees in the sales tax division of the city. We worked out something with them for a carry-over period, and they came in. Then everybody was in. I think once or twice there have been counties that went out for a short period, but it was a small area and not of very much importance.

Hicke: This happened in the forties?

Kragen: It must have been about '48 or '49.

The Sub-Chapter S Corporation in the Fifties

Hicke: In the fifties there was a period of price stability and nothing much happened?

Kragen: There wasn't a lot. Most of the tax law groups were trying to push the state into conformity with the feds. That was our major effort. Another thing we were trying to do, probably by the sixties, was to get the state to adopt a sub-chapter S Corporation provision, which the feds had. It allowed you to form a corporation in which all the income was passed through. It was not necessarily passed through; it was taxed as if passed through. So it was the equivalent of a partnership or sole proprietorship, but it was a corporation and you got rid of the liability question.

Hicke: So you didn't have to be double taxed?

Kragen: You weren't double taxed, and the activities of the corporation--if it got into trouble of one sort or another, you couldn't come against the individuals. There was insulation from liability.

Hicke: Is that why lawyers in law firms--?

Kragen: They weren't S Corporations. They had a special provision in that to allow them to form professional service corporations. They formed those, not from the liability question; what they were in for was the ability to get a very large deduction for pension plans. See, you have one employee, the lawyer, and he set up a pension plan for himself--the largest that was possible under the law. That was a deductible item. Now that has been materially limited, so that even though a lot of them are still keeping them, it's nowhere near as advantageous as it used to be.

Hicke: Did that relate to state or federal?

Kragen: That related to federal, but the state went along with that one after, I think, one or two years. The state wouldn't go along with the S Corporation, which wasn't a professional service, because there was a loss of revenue and some

problems until last year when they did the big conformity bill (or maybe it was in '87). They did then put in the S Corporation with a little gimmick; I think it's a little two-percent penalty tax on an S Corporation.

Hicke: What kinds of businesses would form an S Corporation?

Kragen: Oh, any small business. It was limited as to the number of people. It's been much increased now, but it started off with, I think, six shareholders. Any small business that was an active business. It's been much expanded now, so you can do a lot of things. You could have real property--where you held real property and were managing it and renting it out--and that type of thing now. And you can have certain types of trusts and be sub-Chapter S shareholders.

But originally, you know, you had a little grocery store, or a small--not terribly small--manufacturing business. The thing is that you don't want to hold the income in the corporation, and you don't want to get taxed in the corporation. You're willing to pay the tax at the individual shareholder level. Well, if you're willing to do that, then this S Corporation is a bonanza for you. Because you can get free of liability, and you can get all the deductions and everything worked out. And you don't have to distribute; you just get taxed. So it was a very viable type of device.

Hicke: And frequently used?

Kragen: Oh, yes. It had a lot of traps early on. It hasn't as many now. A lot of people got involved--you know, there were a lot of special provisions in it, and as a result people who weren't knowledgeable enough got caught. You thought you had an S Corporation, and you didn't. But a lot of those have been eliminated. I have no idea now, because I haven't followed it, how many S Corporations there are and how prolific it is. But I would think that there are lots of S Corporations now, because it's been expanded. I think if I were running a business or had some real properties that I was actively managing, I'd probably go into an S Corporation.

Hicke: The state government, then, around the fifties and sixties was increasing its services, obviously. Pat Brown and--

Kragen: Oh, yes. And we were increasing our taxes. Our rates were going up; they went up as high as 15 percent. I don't know what they are now.

Problems

Hicke: There was a scandal in 1965 when tax assessors--it had something to do with campaign contributions. Do you know anything about that?

Kragen: Gee, I don't remember that. The only assessor's tax problem I remember is Russ [Russell] Wolden in San Francisco.

Hicke: That's the one.

Kragen: I've known Russ since he was a little tiny boy. His father lived near us and kept his car in my father's garage. My father ran a commercial garage, you know. I knew Russ very well. He was a very well-known assessor, very well regarded. But he got to using money for improper purposes, making deals, supposedly, where he'd get campaign contributions and the assessed value would be less. And he made deals with commercial property. There were a lot of things. He finally went to jail, I guess.

Hicke: But that was a one-of-a-kind.

Kragen: Yes. We've had individual cases, I'm sure. I know that deals have been made over the years, although much less in recent times, on the question of valued property. California's been fairly clean, actually.

Hicke: Is that luck, or what?

Kragen: No, I think we just never got started with this idea. In Loeb we had some clients who came in from Chicago and bought California property. It was Jake Arvey, who was a big politico in Chicago. We had his nephew who was a partner in our firm, and Arvey sent clients to us. This particular couple of men bought two or three buildings in Los Angeles, and they came in one day with the property tax bills. All they said to me was, "Who do we see to fix this?" I asked what they meant, and they said, "Well, in Chicago we'd give the bills to So-and-So"--they mentioned the name, which I didn't know--"and he gets the assessment reduced 50 percent, and we give him 25 percent as his fee." [laughs] I said, "We don't do that in California."

At that time John Quinn was the assessor for Los Angeles County, a very honest, very good assessor. A man you could

talk to if you had a claim that the assessment was too high. You could work with him.

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Hicke: But there wasn't any fixing going on.

Kragen: No. You know, for the years I was in the attorney general's office, I had the responsibility of advising sometimes the D.A., but sometimes directly the assessors and tax collectors on problems. Every year I attended their convention and spoke to them. I did that a lot, even after I went down to Loeb & Loeb. Talking to them and listening to their comments, I saw politicians, but basically a pretty honest bunch of people from my experience.

Hicke: When [Governor Ronald] Reagan came in in 1967, there was a problem; there was a tax deficit. Do you recall anything about that?

Kragen: Not very much. I wasn't much involved with that at all. I wasn't going to Sacramento in those days, except if the Retailers had something.

Proposition 13 and the Property Tax, 1978

Hicke: So you really didn't have much involvement in the problems leading up to Proposition 13?¹

Kragen: We were involved with the fight on Proposition 13 to the extent that we tried to get the legislature to do something. Because we saw the problem that was happening, and we knew that something was going to happen. We felt that in the long run we'd be better off if we solved the problem in the legislature.

Hicke: What were you trying to get them to do?

Kragen: We were trying to get them to put some limitations on the property tax for residential property and for commercial property. We realized that would cause problems at the local

¹Proposition 13, the Property Tax Limitation Initiative, was passed in June 1978.

level because they'd have less money, but we felt that something had to be done. Because with escalating values, people who were in their homes couldn't stay there, and people in small businesses who owned their property couldn't stay. But the legislature, as it so frequently has done, didn't do anything until somebody came up and drafted lousy legislation or a constitutional provision and got it by.

But we fought. We were against Proposition 13. We thought, and I still think, it was a terribly drafted piece of legislation. And it did so many other things. We may have another Proposition 13 on the ballot this next year-- the split roll provision, which is really going to be very, very difficult. Because it will set a rate for business, commercial properties, double that for residential properties. You know, they start talking about how "we're going to relieve the homeowner and we're going to stick the rich businessmen." The businessman passes the cost on. Of course, the fact is that they do need more money in many of the communities, but I don't think that's the way to do it. I don't know whether it'll qualify. It's being circulated now.

Hicke: Who's carrying that?

Kragen: The same people who carried 103¹--Voters Revolt, they call it, or something. They may get the signatures, and if they do it'll be on the ballot.

Hicke: Oh, it's an initiative. Do you know anything about the [Philip] Watson Initiatives? There were two of them.

Kragen: Yes, I remember them, but really nothing on them. I knew Watson. He was assessor of L. A. County. He was a very flamboyant guy. Both of those initiatives failed, as I remember. We may have done something on them, but I didn't do anything particularly.

Hicke: Is it your feeling that the conflicting interest groups in the legislature just canceled each other out?

Kragen: Well, that's right. The legislature was not willing to take a chance that it might lose some campaign contributions. You see, the counties and cities didn't want this type of

¹Proposition 103, "Insurance Rates, Regulation, Commissioner" Initiative Statute was passed by the voters on November 8, 1988.

legislation, and a lot of businesses--a lot of industries--were afraid of the legislation and figured that they would get stuck. That was the type of legislation that was being put forward. It was just that sort of thing that happened. And the legislature really never spent any time on it. They pushed it aside and never really made an effort on it at all.

Hicke: What effects did you see of Proposition 13?

Kragen: Oh, Proposition 13 changed the whole setup. It changed the spending habits of the counties and cities; that's what it really did. The problem with it was that it really didn't recognize the needs. It sort of set a limit, and it wasn't intended to control the excess spending. It didn't matter whether there was excess spending or not. As a result, the schools were hurt and a lot of things happened. You can go through Berkeley and still see the effects of Proposition 13 on the streets.

Hicke: Are you saying that this Proposition 13 attempted to control the income instead of the expenditures?

Kragen: That's right. It left no leeway. And there were so many things. I always said it was that [Howard] Jarvis drafted the thing one night in a bar. [laughs] You see, Jarvis picked on something, and from then on he was on his way. But Jarvis was always involved. If you look over the old ballot measures, a lot of times you find Jarvis as the one opposing or supporting, and sometimes the only one with the arguments on a measure that you put in the [voter] booklet. If I didn't have time to really study them, I would look, and if Jarvis was for it, I was against it. That's the way I felt. I knew Jarvis from Sacramento, because he lobbied for the apartment house owners association. I thought he wasn't very smart. [laughs]

It was in the courts a lot; it's still in the courts, really. There were just a lot of provisions in it that could have been drafted a lot better, and the whole theory could have been done better. But he didn't ask any advice of anybody, either. He and [Paul] Gann--I don't know how they got together, but they just put it on and used it, I think, to raise revenue for their own little devices, but I'm not sure.

Hicke: I remember right after it passed, at the library, if you wanted to put a book on hold you'd have to go down and fill

out the postcard yourself, and the library was hardly ever open, at that.

Kragen: It just took a lot of the money away from all sorts of places.

Hicke: But now that's not true any more. The library is open longer hours and have computerized all their operations. So they found a way to--

Kragen: Well, they've done a number of things. First, you've got a lot of business license taxes. And, for example, there are some provisions allowing you to raise money specifically for libraries. If you can get a two-thirds vote, under Jarvis, you can add taxes. There have been a number of those. I think Berkeley put in a provision specifically for the library. There have been a number of areas that put in a provision for police and fire. It's been defeated in a lot of areas, but there have been areas where it's passed.

Also, the courts have made some rulings on whether a particular type of levy was subject to Jarvis-Gann (Proposition 13). Some things they've allowed that aren't subject to it, and they've expanded it to some extent. So there's more money being raised in various ways. Like hotel taxes have come in, and all these special service charges of one sort or another which we now have. That's where some of this money's coming from. It's taken us some time, and it's made a proliferation of tax levies of one type or another. I think it makes the system much more unwieldy.

BART: The Unitary System

Hicke: Does the Bay Area have special tax problems that you've dealt with?

Kragen: No, I haven't really dealt with any special tax problems in the Bay Area. They've got tax problems. For example, Oakland and its schools. We've had San Francisco with its big deficit, which it now seems to have found some answers to. We have all sorts of problems, but I have not been involved with them, really.

Hicke: I think BART [Bay Area Rapid Transit] needed a special tax.

Kragen: For BART we had a special tax originally; it placed a half percent additional on the sales tax. It started in San Francisco and Alameda, and I guess Contra Costa, but then other counties surrounding have added a half percent for transit purposes of one sort or another.

Hicke: Did you have to work with the unitary system?

Kragen: I had some matters involved. But in the A.G.'s office I didn't handle the unitary cases; Valentine Brookes did. I have had clients representing unitary tax problems for Loeb & Loeb. Actually, after I came up here I got hired on a unitary tax question by Ohrbach's, which is a New York-based department store which had a store in Los Angeles. I don't remember if they have any others out here.

Hicke: What was their problem?

Kragen: It was a question of whether they could be taxed as a unitary business or whether they could use separate accounting for the California operation. And we didn't win it. I've had others; I've represented other people in that same type of question.

Hicke: There's nothing unique about that in California?

Kragen: We're unique in the way we operate our unitary tax, and still are now, even with the changes we've made and the "water's edge" provision, which basically excluded the foreign operations. There are other states that have a unitary tax provision, sure. But we may have been the first. I'm not sure. I don't remember, or maybe I never knew.

Bunched Income Proposal

Hicke: What kinds of federal tax problems have you dealt with?

Kragen: Oh, all sorts of federal tax problems. One of the things I did was to get the feds to adopt a provision on bunched income, largely representing actors and directors and entertainment people who go along as elevator operators or sales clerks and all of a sudden get into the motion picture industry. The first year they've got a hit and get big money. It comes in in one year, and the year after that they're gone. So I appeared before Congress and proposed

some legislation, which they adopted--not exactly as I proposed it, but they adopted the basic principle.

And I've been before Congress representing the oil companies as a special consultant on the foreign taxes and the credit for foreign taxes. I've been involved in federal tax problems of every sort.

Hicke: These were hearings before--?

Kragen: Assembly hearings, federal Congressional hearings. Some were cases. I've been involved in federal tax cases or federal tax problems. When I was down with Loeb & Loeb I spent a tremendous amount of time on what we call the loan-out problem, which was a question of how you would tax foreign actors and actresses, directors, writers, who were under contract to a British, French, or some other company who loaned them out to us for a period of fourteen weeks or six months or whatever it happened to be. I went back and got a ruling from the Treasury Department that we didn't have to withhold and they didn't have to pay tax if they fitted within certain categories. There were a lot of things of that sort.

Hicke: Whatever happened to the bunched income proposal?

Kragen: Until the '86 act, it was in. You could spread it out over a period of years. We prepared charts showing the difference in the tax consequences between someone with, say, a million dollars lifetime income spread evenly, or nearly evenly, with modest increases over the lifetime, and someone with a million dollar lifetime income spread over three years. We did that sort of thing. And Congress bought it. Treasury didn't do exactly what I had proposed, but the basic principle was there.

Hicke: Do you remember those hearings? Who were those senators?

Kragen: It was the House of Representatives; it was before the House Sub-Committee on Ways and Means or a tax committee. I can't remember. Wilbur Mills was the chairman, I remember that, but I can't remember the names of any other people. It was a big hearing in the late fifties or early sixties on tax changes. They were making a lot of changes, and they had hearings. The Congress asked me to prepare and testify on this thing. I was up here then, and they paid my expenses, a per diem and travel expense.

Hicke: Anything else about federal taxes?

Kragen: Those are the only things I think that I really was concerned with. But I've had all sorts of federal tax cases for clients--every type of tax, nearly.

Hicke: You've told me several unusual ones.

Cases: Sandrich Case; Veit Case

Kragen: There were just all sorts of things that have happened that we had. We had the Sandrich case, which made new law on the question of whether you could deduct the cost of part of your home if you did business at home, before they changed the law. They changed it to restrict it very materially. Mark Sandrich was a writer/director, and he did most of his work around his swimming pool, literally. I mean, he had people come out, and he had writers and everything. He worked there. He had an office at Paramount, but he didn't use it. We took a deduction, and the feds denied it. We went to court and won. It was the first big case on that general subject, and then eventually the feds changed the law.

Hicke: Was this while you were at Loeb & Loeb?

Kragen: Yes, that was at Loeb & Loeb.

Hicke: How did you happen to take a deduction for that? What gave you that idea?

Kragen: We didn't advise on it. He had a business manager, a fellow named Walton. He prepared his return and took the deduction, and when the feds questioned it, then it came to us. And you have a big case that still is cited on constructive receipt. A fellow named Howard Veit, a real smart man, the best witness I ever put on the stand. I don't know if he was ever married before (I don't think so), but when he was forty-seven or -eight he married a young woman. They had a child, and he decided that at fifty he was going to quit. He was vice president of a big textile outfit in New York. The first thing was that the year he quit he had a salary plus a percentage of profits, and that was not paid until the following year. Well, before that was due--after the year, but before the amount was to be paid--we made an agreement with M. Lowenstein, which was his employer, to spread it over

a period of years (because he had a lot of other income that he hadn't anticipated) as part of a deal where he would do consulting services for M. Lowenstein and be paid for them.

The feds took the position that he constructively received that in the year in which it was originally to be paid. We took it up and got the court to take the position that this was not constructive receipt, but there was a quid pro quo; it was part of a business deal, and therefore he could properly spread it over the five- or six-year period. We won that, and it was quite a victory. You still see it in the case books. Every once in a while somebody talks to me about it.

Hicke: What's the name of the case?

Kragen: Veit v. Commissioner. There were a lot of cases. I can't remember all of them.

VI TEACHING AT BOALT HALL, 1952-1973

Recruitment by Dean Prosser

Hicke: It's the highlights that we want. Maybe we can get back to the 1952 move that you made when you came back to Berkeley. Your wife was very interested in coming back.

Kragen: Yes, she was, as I said. And she took the burden because my income was cut so materially that she was the one who had to do it, and she wanted to do it. That was fine with me.

Hicke: Did you contact the University, or did they contact you?

Kragen: No, what happened was this: I had been somewhat instrumental in having Stan [Stanley S.] Surrey come out to Boalt. He'd been assistant secretary of the Treasury. He was a good friend of mine and one of the top tax minds in the country. He decided in 1950 to go back and teach at Harvard, and Boalt needed to fill his position. I got a call from one of the faculty here--I can't remember who it was--saying that the faculty had met and voted to have the dean offer me a professorship here, and that I'd be hearing from the dean. Well, I did not hear from him. The next thing I heard was that they'd hired as a visitor for a year a fellow from Cincinnati, Ralph Rice, who later went down to UCLA. So I just forgot about it. It was something that I hadn't really considered at that time.

Then Rice didn't work out very well, and all of a sudden I got a call from [Dean William] Prosser. He wanted to come down and talk to me, and I knew then, because of other calls, what it was. So he came down. My wife was so enthusiastic

about coming back here, that she really--I told her, "Remember, we're going to have to negotiate." [laughs] She was wrecking all my negotiating power by saying, "That would be wonderful. That would be wonderful."

Prosser and I talked it over, and then I came up here and talked to faculty members. We made a deal, and I came in as a tenured professor and had a chair. I didn't have to go through all the tenure process. I was on the payroll by July 1, 1952.

Hicke: You're a fairly conservative practitioner, is that correct?

Kragen: Yes, I guess I would be. Yes, I'm a conservative practitioner.

Hicke: The reason I ask that is because I wonder if there is an attempt made by the faculty to balance the people as to liberal and conservative viewpoints.

Kragen: No, I think not, especially in my field. What they wanted was somebody who was an expert in tax, who had a good statewide, at least, reputation. I'd written quite a bit at that time. Actually, after I came up here I wrote less than while I was in practice. I was fairly well known, and that's what they wanted. And at that time I was a registered Democrat. I'd been an Al Smith Democrat when I was twenty-one; that was my first vote [laughs], for Al Smith. I was never, though, a liberal, really a liberal. I was moderate.

Composition of the Faculty and Student Body

Kragen: I think the faculty was well over-balanced, if you think of it politically, with liberals. It so happened that we all liked each other and it didn't matter what our politics and our feelings were. I remember that one of my more conservative colleagues, in the [Dwight D.] Eisenhower race, was obviously going to go for Eisenhower. One of the other colleagues, who was very close to him and a very good friend, came to me one day and asked, "Can we do anything about Bill?" It was Bill [William] Keeler, who was an associate dean, who was going to vote for Eisenhower. And I was going to vote for Eisenhower, although I didn't tell him that. But this colleague said, "I don't think I can ever talk to him again if he votes for

Eisenhower." We had a few of those. This was one of our refugees, [Albert A.] Ehrenzweig, who had come over from Austria and was just more serious about politics than most of us.

There was a liberal majority on the faculty. But everybody was so friendly and close; we might argue politics, but it never got to any recriminations or feelings that affected the faculty.

Hicke: I think you indicated to me before we got started that the friendliness here was one of the--

Kragen: Oh, yes. When Prosser was down trying to sell me the bill of goods to come up here, one of the things he said was, "Our faculty is sort of indecently fond of each other." [laughs] Well, we were. We did lots of things together socially. We'd fight battles in faculty meetings, and I was one of the worst because I can't keep my mouth shut. But after that we'd go out and there were never any hangovers. I shouldn't say never, but except for one instance there really were never hangovers of our battles. And we battled hard on problems in the law school. But the faculty was small, and we were close.

Hicke: What else did Prosser tell you about the school?

Kragen: He told me about the fact that they had recruited some very good people and that the school had gotten itself a fine reputation. Of course, it was my school, and this pleased me. I can't remember if, when he came down, they were going into the present building or had gone into it. They went into it a few months before the dedication. The dedication was in March of '52, and I came up for it. But they'd been in the building since late '51, I think. He told me about the building and the plans, and about the [University President Robert Gordon] Sproul support for the law school, which was always very good.

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Kragen: The law school salary was still 75 percent less than my last year's income, and I would have probably been making more if I'd stayed the whole year of '52 with Loeb & Loeb. And he made this promise, which I never tried to hold him to, and which was never in writing, "I can promise you that you will always be the highest paid faculty member." Of course, it didn't happen.

Hicke: Did he have the say on that?

Kragen: No. As a matter of fact, what happened was that because of the salary, which was high for those days (and awfully low, I thought), the budget committee fooled with the thing and just pushed it away for a couple of months. I finally wrote Prosser and said, "Look, I have to make my plans. Either I know within the next two weeks, or I'm not going to come." Prosser went to Sproul, and Sproul took it on. Sproul did that a couple of times in matters in which I was involved. He overruled everybody.

Hicke: He really took an interest?

Kragen: He had a good interest in the law school. And, you know, I think that's one of the reasons Agnes Robb has had such an interest in the law school. Before she died she gave us a chair and a lecture series endowment and some other things. I think that's a carryover from Sproul's personal interest. She was his administrative assistant or secretary (whatever you call it).

Hicke: What else did you find when you came back to Boalt?

Kragen: I found that at the top were what I thought were better students than I'd had when I was here. I thought they were very good at the top. One example is now-Professor [Babette] Barton, who was in my first class in tax, and others who were similar. But at the lower end I thought they were worse than they had been in my day. [laughs].

Hicke: How do you account for this greater spread?

Kragen: I just don't know, because in my day they could get in just by graduating from Cal. I don't know why, but that's the impression I had. That gradually changed. The first class I had was small because I taught second- and third-year courses and there was a carryover from the old school, where you couldn't have second-year classes of over seventy-five. But the next year, when they let in more people, I think they weren't as careful. They gradually got more careful.

Hicke: So maybe their standards had dropped a little bit?

A Myriad of Courses

Kragen: Yes, when they let in more people for the next year. One of the things that happened--and it shows how naive I was on this whole thing--was that the understanding was clear that I was to teach an income tax seminar, estate and gift tax, and an estate planning seminar. You know, it was tax; that was all I had been doing, basically. I was here about two weeks, and Prosser comes into the office (an office across the hall here), sort of shamefaced, and he said, "Covey Oliver," who'd been teaching estate and gift and estate planning--it really was not his field, but he'd been teaching it--"doesn't want to give it up. Would you teach some other course?" And, like a sucker, I said, "What do you have? What is it you want me to teach?" He said, "Antitrust and pleading."

Now, I had only a slight familiarity with antitrust. We'd had the treble damage suits in our office, and I'd talked a lot and worked a little bit with them. And pleading--I wasn't a civil trial lawyer; I was a tax lawyer, and our cases were altogether different. So I said yes. I worked like a dog. I just worked so hard for those courses.

I had taught antitrust for two years, and I was having lunch with Steve [Stefan] Riesenfeld. I can't describe Steve. He's a wonderful guy. I call him, because of some of the crazy things he does, a crazy genius. He's still really a genius. But he was also a refugee; he was from Berlin. He escaped and came over here. He was a professor in Berlin, but started as a student here. He didn't speak English, and in three weeks he was reciting in class. That's how good he is.

Anyway, I was having lunch with him one day, and he said, "Why did you steal my course?" I said, "Steal your course? What course did I steal?" He said, "Antitrust." So I gave him back antitrust.

For four or five years I taught all sorts of classes. I started the copyright course here; I started the state and local government course here, which we'd never had. There were a number of courses that I did, and I taught all sorts of courses over a period of five years, until Oliver left. Then I took over all the taxes. If I had been knowledgeable about University things, I would have told the dean, "Too bad. I'm sorry, but that's what you promised me, and that's what I'm

going to teach." But I was a sucker. But it was good experience.

Hicke: Looking back!

Kragen: I really worked so hard. I did a good job in those courses, at least from what students have told me from time to time. But I worked, because I was learning, basically, a completely new field. [laughs] But the school itself was very good. I shouldn't say I was completely happy. I was worried that first year, and I just felt maybe I'd made a big mistake-- this really wasn't for me. As a matter of fact, I was still doing some consulting work, and I went down for a job that the Loeb office asked me to do. I talked to them about coming back. They said, "Great, we'd love to have you come back."

But then a lot of the students went in to the dean to tell him how great they thought my courses were, and as a result I felt a lot better.

Hicke: Why weren't you so happy?

Kragen: Well, I just felt I wasn't doing a good enough job. I thought I wasn't communicating. I think I did the same when I left the attorney general's office and went to Loeb & Loeb; I felt I just wasn't good enough. And I don't know that I was good enough, but the students gave me confidence.

Hicke: It was pretty tough, since you hadn't had much experience in these fields.

Seminar in Business Tax Planning, 1953-1973

Kragen: No, not in those fields. In the income tax field I was fine, because I had really been in that. I could teach that with no problem at all. Then I created this seminar and brought in a number of outside practitioners, because I had a lot of contacts. It was a seminar on tax planning for the business enterprise. At that time I had fifteen sessions, so I think I brought in six or eight outsiders, some from Los Angeles and some from San Francisco--the top tax people.

Hicke: Do you recall who any of them were?

Kragen: Well, Sam Taylor was one; Frank Keesling from Los Angeles was one; Don Rosenfeld from Los Angeles was one; Dana Latham from Latham & Watkins was one; Maynard Toll from O'Melveny & Myers; Harry Horrow from Pillsbury [Madison & Sutro]. I mean, I had really top people over the years. I've always had them. We still do that seminar. We're not doing it this year because of a sort of a screw up.

Looking back at it, there were fifteen sessions. The first session was organization, and I gave out the first problem. Either I or the outside practitioner prepared a problem. If they were having a session, they prepared a problem and gave it to me ahead of time. I gave it to the students, who researched it and wrote it up in teams of two, three, or four, as the case may be. Then I read them and the outside practitioner read them, and then the outside practitioner came in and went ahead and conducted the session based on the problem.

In those days I gave fourteen problems. Each problem took at least twenty hours to prepare--at least. I thought that was normal. Now, I gave the course last year. We had fourteen problems, but we only had four of them written up. The rest were researched, but only four written up. Well, the course was a killer the way I gave it. But I have had students who were in those early years, some who are practicing tax law and some who aren't, come to me and say it was the best course they'd ever had in the law school. Because they saw what outside practitioners were doing, and they had a chance to analyze real problems. But it was a real killer. You couldn't get by with that now; you'd get nobody in the class if you did it.

Then I had the pick--I had forty or fifty applicants for the course, and I only took twenty. But now, if you get twelve or fifteen you're lucky.

Hicke: Do you see that students aren't as willing to work as hard?

Kragen: No, it's partly that the course has a reputation for being very difficult, partly because it's really geared to the people who want to go into tax law. And partly because we've had such a proliferation of courses in this school. They've got so many choices, and there's the clinical stuff that some of them get into. There are all sorts of reasons. And this is a very tough course.

Hicke: What made you start that course?

Kragen: I just thought the students ought to have more familiarity with the practice itself and with the type of problems that faced the practitioner. I could have done them all myself, because I'd had enough experience, but I thought it would be much more valuable if I brought in top people. And the tax bar over all the years has been wonderful. They have to prepare the problem, come up from Los Angeles, or wherever-- it wrecks their day. And they're all high-paid people.

Hicke: Do they get some sort of honorarium?

Kragen: For years we have offered them an honorarium. Most of them didn't even take transportation [reimbursement], even the Los Angeles people. They wouldn't take it; they didn't want it. They liked to come. It was a chance, also, for them to size up some students, and maybe they would have a chance to hire some of them.

Hicke: They had a lot of homework to do, too, to come up with a problem.

Kragen: Oh, they had a tremendous amount of work, especially when I had these written problems. I had twenty students, and that meant I had five to as many as ten papers that they had to read. I did one thing. They were typewritten, and I put a maximum of ten pages; you had to boil it down to ten pages. But if you had six or eight papers, that's sixty to eighty pages of stuff to read. And they got it on a Friday, and the class was on Monday. See, I got the papers to them on Friday, so they had to work over the weekend! [laughs] The tax bar has always been wonderful on that. I've been turned down for one reason or another--good reasons--but I've never really been "turned down," somebody saying they didn't want to do it. And it's still true.

Last year when I set up the program I brought in, I think, twelve outside practitioners, and everybody I talked to said yes.

Hicke: When did you start this?

Kragen: Let's see, I came here in '52, and I gave it the first time in the fall of '53. I remember Professor Barton was in the first seminar. I worked them so hard that my wife and I decided that after the last session we'd have a cocktail party at the

house. So we did, and the class came up. They could bring their husbands, wives, boyfriends, whatever. I can never forget, because one of them--a wonderful guy who died this year--when he left the house I got worried. We'd had some food, but we weren't having dinner; we just had cocktails and hors d'oeuvres. I got worried that he was going to drive down (we lived up in the hills), so I said to my wife, "Hereafter when we do this, we're going to have a dinner." And we had a dinner from then on. [laughs]

Last year Professor Barton did it, but normally I did it. I had a dinner two years at the Faculty Club. You know, it gets to be a close-knit group, when you've got a group that's working together so closely and so hard.

Hicke: Would the teams change?

Kragen: Yes, I changed the teams every week. I didn't always do it right, but I had a formula. What I wanted to do, and I think most of the time I did, was to give everybody the opportunity to work with every other member of the class. I had these big charts, but I screwed them up every once in a while. Somebody would come to me and say, "I was on this team with this person--" [laughs]. You could tell by that system who was really working and who wasn't. Because they divided the issues, and you could tell if somebody was really not contributing. They mostly did. I had one woman, actually, who I thought just never contributed. But that was the only one that I had in all the years, and I did it until '73. Then I've done it since a number of times.

Hicke: Every year you taught it?

Kragen: Every year until '73. I retired in '73.

Hicke: Then you said you started a copyright course?

Kragen: I started a copyright course which we were talking about the other day at coffee. [John] Fleming gives it now, and Steve Barnett gave it for a while. We agreed that it's the most fun course to teach of any course.

Hicke: Why is that?

Kragen: Well, the fact situations. You can get the kids interested so easily with all the fact situations that come up. As I told John Fleming, I never should have given it up. I gave it up

when I started to teach nothing but tax; I gave up copyright and the rest of these things. I had had some experience with copyright in the Loeb office.

Conference on Entertainment Law: Ideas for Conferences

Kragen: I think it was in '54 that I had a big conference up here on entertainment law. It was financed by the motion picture industry, and I brought up the entertainment industry lawyers and some from the East. We had a wonderful three-day conference. It was terrific. In fact, it was so good that if we hadn't been discouraged by the dean, who didn't like that sort of thing, we would have made it a permanent thing. Instead I talked to UCLA and USC, and USC finally did it.

One of the interesting things in it was that after the final session we had a dinner at the Berkeley Women's City Club down there on Durant. Our speaker was Ronald Reagan. He was the president of the Screen Actors' Guild at that time. We didn't want a profound speech, and we didn't get one.

Hicke: I bet he was very good.

Kragen: He was fine; he was good. Nancy came up with him, and they stayed up at the Claremont [Hotel]. I remember we took Nancy and Ronald and Roger and Madeleine Traynor and we all went back to the Claremont and had a drink when the thing was over. He and Traynor were in thorough accord in their political philosophy at that time. They both were liberals [laughs]. This was in 1954.

Hicke: How did you happen to have this conference?

Kragen: I thought it was something that was a good idea, and I was still in contact with the motion picture people a lot; I did some work for them. I just thought it was something we could do. I put on a number of conferences here. I put one on on atomic energy, one on copyright, one on trademarks and trade names. [Arthur] Sherry and I put one on for the judges. I did a number of those things over the years, early, until I got tired of doing it, because the dean gave you no support on it. He didn't believe, really, in those things. He was fine; he participated and he loved the social functions, but he didn't give them real support. And I came up with some

proposals to get foundation support for continuation of these things, and he just wouldn't do anything about it.

I had a proposal that I still think would have been a great thing. I gave him a long proposal, and he just put it in the wastebasket. It was one to have an annual conference at, probably, the East-West Center in Hawaii, of the law teachers of the Pacific Rim countries by subject matter. Like you'd do torts, or tax, and have all the tax teachers from the Pacific Rim countries meet together and set up a program. I think it would have been a great deal, but Prosser actually, literally, threw the proposal in the wastebasket.

Hicke: Why?

Kragen: He didn't believe in going to foundations and getting money for this sort of thing.

Hicke: He didn't like conferences in general?

Kragen: I don't think he did. That was outside the scope of teaching and writing; he was a tremendous writer. So you got discouraged a little.

Courses on Copyright, State and Local Government

Hicke: Does the copyright course now include such things as computer software?

Kragen: I really cannot tell you; I don't know. I would assume it would cover the problems of computer software.

Hicke: What kinds of things did you see change over the years?

Kragen: You see, I only taught it for three or four years. There was the Jack Benny case and some other cases on fair use and parody. Jack Benny was the parody case.¹ But there were no law changes. Now, subsequently we've had some big law changes in the copyright field, but I have not followed them at all.

¹Loew's, Inc. v. Columbia Broadcasting System and Jack Benny, 131 F Supp. 165 (1955); 239 F.2d 532 (1956).

There have been big changes in the tax bills, and it's tough enough to follow those.

Hicke: Then the state and local government course?

Kragen: I taught it as California state and local government. We did look some at outside, but I basically taught it as the structure of the constitution of California, the legislature and how it operated, the local governments and how they operated, the interaction between local and state governments, the home rule cities, the chartered cities and the non-incorporated areas, all that type of thing.

Hicke: Did you see this as possibly for potential legislators?

Kragen: For example, a number of my students have gone up and been lobbyists, and a number of them have been in the legislature. That's what I thought--they ought to know the way their state and local government operated. We didn't have anything then, so I--oh, I guess I mainly just got restless doing a course for a while, and I decided I'd do something else.

Hicke: Was there a lot of interest in state and local government?

Kragen: Fair, not great. I think the largest class I had was twenty or twenty-five.

Hicke: Was seventy-five the limit?

Kragen: No, by that time we were admitting two hundred students, I think, into the school, so we had classes that were as big as--I had a tax class here that was as big as a hundred and fifty, I think, when I was the only tax teacher and the class was required. So we had some large classes and we still have. Even though we have sections, we still have some quite large classes.

Hicke: Who else was here on the faculty when you came?

Kragen: [Richard] Jennings, [Frank] Newman, [Edward] Barrett; [Warren] Ferrer; and [Barbara] Armstrong was still here when I first came. Who else was still teaching? [William T.] Laube was here. I think there were fourteen on the faculty.

Hicke: Was Ehrenzweig here?

Kragen: Yes, and Riesenfeld came the same day I did. Oliver, Prosser.

Growth of the Law School

Hicke: What kinds of problems or challenges did the law school have?

Kragen: Its problem was meeting the needs of an expanding student body. I mean, they transferred over from a student body in 1951 of a maximum of 225, and here they had a school that could take care of 900 or more. They gradually increased it, but the problems of handling that and recruiting new faculty-- well, the first problem, of course, was a building that was badly built.

Hicke: It was badly built?

Kragen: This is a terrible building, the law school. The University architect built it, and he'd never designed or built a law school. From what I've been told, he didn't go and look at any. In fact, I've been told that when they first moved in, the acoustics were so bad they really could hardly use the main classroom. They had to hire [Vern] Knudsen, I think his name was, from UCLA to come up and do some acoustical studies and put in some acoustical stuff.

Another thing that happened was that they designed this building to go towards Cowell [Hospital], but the Zeta Psi's had this red brick building next to us. They had enough influence with the regents to cancel the proposal to condemn the building and wreck it. As a result, they had to redesign this building to go up the hill. That changed, I think, some of the things they were doing. But it was a bad building.

Hicke: What else was wrong besides the acoustics?

Kragen: The classrooms are built so that they are not as effective as they should be. You've got long, big classrooms, 110 to 130--

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Kragen: --they were just too mammoth. Instead of having classrooms that came around, so you were sort of centered around a half-circle, which is a very effective method, you were talking to fifteen rows up in a full classroom. Fifteen rows up were the best people, and they couldn't hear you and you couldn't hear them sometimes. I have a big voice, so they heard me, but I couldn't hear them a lot of the time. But I walked around.

That's how I got in the habit of walking up and asking questions in the last rows. I walked all around.

Hicke: Was that just to get more contact with the students?

Kragen: Yes. And you keep them more alert; they don't go to sleep. I do a lot of hypotheticals: "Suppose," and then I go on. So I'd stand in the aisle next to this fellow or girl and pose the question.

Hicke: So you invited class participation.

Kragen: Oh, we had lots. The faculty insisted on it. I did some things that they hadn't seen before, one of which was walking out of the classroom when they weren't fully prepared, which really disturbed them. That was one of the most effective things I think I ever did. I had had it happen to me with Captain [Alexander] Kidd in the old days. I knew it had been effective with us, so I thought it would be effective with this class. I think the first year I was here I walked out. I didn't do it a lot; I did it once in a while. I did a number of things. We tried to keep them awake.

Teaching Methods

Hicke: Tell me some more about your teaching methods.

Kragen: I do a lot of questioning. I do a lot of giving them a hypothetical set of facts, and then pushing them on their analysis of what the issues are in those facts. I have things that a lot of students don't like. I've always started with rules, partly because of my own experience in the practice of law. I consider that the student should be in the class on time and prepared. Attendance was vital. As far as I was concerned, if they were signed up for the course, they'd better be there, or they'd better have a good excuse not to be.

Most of my colleagues don't agree with that. Some of them, over the years, have come over to that system. I remember people who weren't at court on time, and some of the things that happened. I just think you get habits. I think that if you're not going to be prepared for a course, why take it? My course was very tough, so I did things like that which

were required. I took class roll, which very few people did. I had a class list, and I didn't do a completely effective job, but I did some.

If the subject was fairly tough, I'd lecture and give them the broad outlines. Then I'd start questioning on hypotheticals as they applied to this broad outline. That was the method I used. Whether it was effective or not, I don't know. But I did it that way. The students seemed to appreciate it.

I enjoyed the students. There are people now, especially, who call the students by their first names and everything of that sort. But I didn't make pals of students. I was much more formal, but I enjoyed them. My door was always open for them to come in and ask questions or talk or anything like that. I enjoyed teaching, that's all.

Hicke: Did you enjoy it as much as practicing?

Kragen: Yes, I did. I enjoyed it more, eventually, when I got so that I was at ease with it. Early on I enjoyed it, but it was tough.

Hicke: You never see the same student twice, do you?

Kragen: You do. For example, in the tax field I might see the same student. Even when I was teaching antitrust, I had students who were taking tax, taking antitrust, taking pleading. And the seminars, in the early years, were all students whom I'd had because I was the only tax teacher. Later, when we got more than one section, why, it was a different thing. But for the first five or six years I was the only tax teacher on income tax.

Hicke: Talking about changes in the student body from the days when you were going to law school, when you went back were there more students from out of state?

Kragen: Oh, yes. The first year I taught it was still the limited enrollment group; it was still a small group. But as we increased enrollment, why, we got more and more students from out of state. Because this is the best cost-effective law school in the world: at Boalt. I was talking to somebody last night who was going to some school in the East, and he was paying \$16,000 tuition. We're paying what--\$1,600 or

\$1,700? And it's \$6,000 if you're out of state. We're one of the top schools in the nation, at a price that's really cheap.

Choosing the Faculty

Hicke: When you came back in '52, were the faculty mostly Boalt graduates?

Kragen: No. There were two; Traynor and Armstrong were both graduates. Barbara Armstrong, of course, was the first woman professor in any major law school in the United States.

Hicke: This was when you were in school.

Kragen: Yes, but she was still there when I got back, but Traynor wasn't. No, Traynor was on the court. But Armstrong, Jennings, Newman, and Barrett were all graduates, and I was a graduate. And Riesenfeld was a graduate. The majority of the faculty have not been graduates. In fact, one of the things I fought as a member of the faculty over the years was to hire graduates. As I always said, the one you know the best, you don't give the same opportunity. You know the weaknesses of somebody who's been a student; you don't know the weaknesses of somebody you are just interviewing, really. I pushed, and we now have a fair number, but a big majority are not our graduates--a very, very heavy majority.

Hicke: I read that in the late fifties they started hiring more who were from other places.

Kragen: When I was in school, there were ten members on the faculty, and Traynor, Ferrier, and Armstrong were the only graduates. When I came back, with fifteen faculty members, there were probably five. The school never, at any time I know, had a majority, or anywhere even close, of its own graduates.

Hicke: I have a few more names here. You mentioned Laube.

Kragen: Yes. He taught contracts and something else.

Hicke: [Judson F.] Falknor?

Kragen: Falknor was here for a while, and then he went to NYU [New York University]. He came from some eastern school. I can't remember which one.

Hicke: Warren Olney, III?

Kragen: Warren Olney, III, was a graduate of this school. He was here for a few years and then went to be administrative officer of the federal courts. He was in charge of the administrative office for the Supreme Court and the federal court. He was an Earl Warren protege, and Warren brought him back. He was here maybe three or four years and taught criminal law. I had known him in the attorney general's office; we were in the attorney general's office together. A very fine man. His father was a justice of the Supreme Court, and then went to form McCutchen, Olney, Mannon & Green.

Hicke: Arthur Sherry?

Kragen: When Olney left for Washington, we needed a criminal law professor. I knew Arthur very well, and I pushed and a number of others pushed for him to be hired. He was a graduate of this school.

Hicke: Where was he before?

Kragen: We'd hired him from the attorney general's office, I think. Either that, or he was the head of this criminal law revision commission that they appointed at that time. That may have been a full-time job that he had.

Hicke: I think we talked a little about Sam Kagel.

Kragen: Well, Sam was here part time. Sam taught labor law, and then he taught a course on negotiation. For a number of years he taught here part time and kept telling us he was going to decrease his practice and come more and more, and the opposite occurred. Eventually he decided he couldn't do it.

Hicke: He was in such demand, I guess.

Kragen: Sure, he was the leading arbitrator.

Hicke: What are the advantages and disadvantages of a part-time person who's also practicing?

Kragen: I think the big disadvantage is that the part-time person is running the private practice rather than being available to students. It's been true in every school, even when there were full-time people who had a practice, like Handler at Columbia [University] and others. They'd run out of the class. They had clients to see and everything. So you don't get the advantage of whatever their abilities are. And then the students can't get enough time with them. I don't know that it was true at all with Kagel, but it certainly is true with some part-timers; they get involved in some big matter, and you can't get the necessary time with them.

My son-in-law taught here last semester. He worked like a dog, and I think he was prepared all the time. But part of the time he had a big subdivision going, and I know there were times when--luckily Barton was doing the tax part, so he got relief; he didn't have the whole burden. I know what a grind that would be, and that's true of any part-time person.

We do have quite a few part-time people who come in and do a special course or something, and they work out all right. But if you keep doing it forever, in effect, it just doesn't work satisfactorily.

Hicke: Are there advantages in the fact that the individual is actually practicing?

Kragen: Oh, yes, there are some great advantages from the fact that they come out of practice--that they're in practice and they see what's happening. Some of them are quite good. We have Mike Traynor, who comes and gives a course in remedies. We've got somebody on immigration law who comes regularly, and we've got some other people. We had for years Ed Heafey from Oakland--we have somebody else, now, I think--doing a trial practice course. It's got advantages, but they treat them as real part-timers, while Kagel we were treating as a full-time professor, basically--as a regular member of the faculty. The other people are not regular members of the faculty, and it's different. You don't expect anything from them except the course. So it's an entirely different setup.

We had that happen with [John] Hetland here, who got more and more into practice, and he finally went half time. And we really don't count on him, except to teach his particular course. He's very, very good, but we don't count on him as a participating member of the faculty.

Hicke: You lower your expectations a little bit.

Kragen: That's right.

Hicke: David Louisell?

Kragen: David Louisell was a wonderful man who came here from Minnesota. I can't remember what he taught. Maybe he taught some constitutional law, and he taught procedure, I think. He died while a member of the faculty here. He was a very good teacher, an excellent teacher. And a very good colleague. I think he may have graduated from the University of Minnesota, but anyway we hired him from there.

Hicke: Sho Sato?

Kragen: Sho was a graduate of Harvard who came out here as a teaching associate and then went to the attorney general. We hired him from the attorney general's office. He was a very good man, a wonderful person. He taught tax with me for a while, but he taught state and local tax, state and local government, and natural resources; he was really an expert on natural resources. When we started getting the contacts with Japan, he was really the important factor in getting the Japanese participation.

Hicke: Was he Japanese-speaking?

Kragen: Yes. He was born here, and his family was relocated during the war. He was in the armed forces during the war and did Japanese interpretation. So he spoke Japanese. He went over quite a number of times and spent a semester or more lecturing the Japanese.

Exchange with the Japanese and the Shoup Commission

Hicke: What did you mean when you said you started getting the Japanese participation?

Kragen: Some of the Japanese corporations have set up a fund, and we have Japanese come over here and we have some people go over there from time to time.

Hicke: Students?

Kragen: Students came over, and faculty, too. We've had Japanese faculty teaching over here, and we've had our faculty go over there. I can't remember the name of the program, but it's now in Sato's memory, because he died two or three years ago, fairly young.¹

Hicke: Is it a chair?

Kragen: We don't have a chair, but we have a program that's in his name.

Hicke: I wouldn't think there would be too much that you could exchange in law with the Japanese.

Kragen: As a matter of fact, the Japanese tax system, which they are changing now, was set up after the war by an American group; Stanley Surrey was from here. It was called the Shoup Commission, and Stan was one of the important factors in the setting up of the Japanese tax laws. And there are other things. Jennings has done a lot with corporation law in Japan.

Hicke: Do they have antitrust?

Kragen: I don't know. I don't think so. They didn't have when I was fooling with that, but I don't know whether they've put anything in. They've put some restrictions in. No, there are a lot of things. We've had a lot of graduate students from Japan over the years in the law school.

Hicke: Do they go back to Japan?

Kragen: Yes, they go back and teach or work in corporations or something else.

Hicke: I still can't quite fathom that. What would Japanese faculty teach here?

Kragen: They'd teach Japanese corporation law.

Hicke: So they teach Japanese law.

¹The Sho Sato Japanese Legal Scholars Program.

Kragen: Yes, but if you're going to work for Graham & James or somebody and work in Japan, it's very important. Most of them have been educated here, too; they have been graduate students here, and they know a lot of American law. And there's a lot of similarity in some areas.

Hicke: A student taking a course with a Japanese teacher might be one who was interested in corporations dealing with Japan?

Kragen: Yes, probably, or possibly.

Hicke: Or in Japanese corporations coming to the United States and investing?

Kragen: Yes, that's right. We don't have many, but a couple of years ago we had one teaching for a semester. We have them frequently. And we have a lot of them as graduate students who come over. And a lot of professors come over here and study American law. In contrast to our way, they'll come over without their families and be here for a year and then at Harvard for a year. It may be two or three years before they ever go back to Japan.

Hicke: Why do they want to study here?

Kragen: Because their people are doing business with us.

Hicke: What about Chinese or other nationalities?

Kragen: I don't know how it is now, but Bob Berring, who is our librarian, is an expert on Chinese law. He's taught in China two or three times. We've had quite a few Chinese scholars over here in the last few years. Whether there are any now or not, I don't know.

Hicke: Any other Pacific Rim countries?

Kragen: We have Filipinos and Indonesians. We had an exchange deal with Indonesia and with Singapore for some time. We had faculty from here going over and teaching in Singapore. From Indonesia we had a number, for about ten years, of really top people coming over here and studying. You know, there were people from the ministry, people from corporations and other things.

Hicke: How did that get started?

Kragen: It was when Ford [Foundation] was funding a lot of law projects. We had one with Cologne [Germany], for example, under the Ford money. Ford put some money in a program for five years or so that we did with Singapore. In the case of Indonesia, I think the Indonesian government put up some money and Ford put up some money.

More on the Law School Faculty

Hicke: Rex Collings?

Kragen: Rex Collings was a graduate of this school. He was number one in his class here, and he went to NYU to teach. We hired him from NYU. He was an ex-Marine. He was a nice guy, but very difficult. He had lots of problems with students and some problems with faculty, too. If I'm conservative, he was reactionary. [laughs]

Hicke: Some military rigidity.

Kragen: Yes, he was very difficult in that sense. We got along as faculty, but he was not one of the top choices that we have had over the years.

Hicke: How about Geoffrey Hazard?

Kragen: Geoff Hazard came to us from--I can't remember what school, but he was very good, and he is very good.

Hicke: He's written several books.

Kragen: He's very, very good. He was with us for five or six years, and then he went East to one of the eastern schools. Now I think he's at Yale, and he's also the American Law Institute's director.

Hicke: What did he teach here?

Kragen: I can't remember.

Hicke: I think you mentioned Jerome Cohen.

Kragen: He's a brilliant guy, but he's the one fellow that I had real personal problems with. Jerome came from Harvard, or maybe

Columbia, and we set him up. We gave him leave time and money to become a Chinese law expert, and he did. But just as soon as he became a Chinese law expert, he left us and went to Harvard. We financed everything and gave him time, and he gave us nothing. And I had other problems with him. He's now left Harvard and is a partner in a New York law firm, and he's the China expert. He's certainly quite bright and has certainly done very well for himself. I always felt that he'd climb on top of your back with a knife if he thought it would be best for himself. That was my feeling, and I had some experience with him. We never had that sort of thing on this faculty. He was the only one we've ever had it with.

Hicke: Edward Halbach?

Kragen: Ed Halbach is still here. He's a very bright man who was dean for a while. He teaches estates and trusts, estate and gift tax, estate planning--he's quite an expert in the estate planning field. He lectures all over the country and is highly regarded all over the country as an expert on estate planning and estates and trust. He's written a lot. He's a very, very fine person and a good scholar and a great addition to this faculty. And very much a sports fan [laughs].

Hicke: John Hetland?

Kragen: John is one of the leading experts in real estate law. He is hired all the time as an expert witness and as a consultant. He has a law firm in a house on Warring at Parker, on the southwest corner, right across from the blind school--or the Clark Kerr campus. They've remodeled a house into a law office. He's very good in that field, and he teaches one course for us in real estate law. He teaches half time. As a matter of fact, he went for us and taught three months at Cologne last year.

Hicke: Under the Ford Foundation?

Kragen: No, we have another deal; it's not Ford anymore.

Hicke: I have one more name, Ira Heyman.

Kragen: Well, he's the chancellor! Ira Michael Heyman.

Hicke: He came in the late fifties.

Kragen: Yes, he came with the group--Hetland, Halbach, Heyman, Sweet, and I don't remember who else. We hired four or five people at one time. They were all young, and we were much older than they were. It was a new group, and all were very, very good. Heyman is an expert in land-use planning and property law. He taught those courses, and taught a course in the school of architecture.

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Kragen: He is very well regarded and was a very fine member of this faculty until he went wrong and became an administrator [laughs].

Hicke: You mentioned Sweet--

Kragen: Justin Sweet came from Wisconsin to us. He teaches construction law and that type of thing. He's developed into a highly regarded expert in that field. He's grown. He's one who really wasn't as good when he started as the rest of the people who came. But he's developed quite well.

Dean William Prosser

[Interview 5: September 19, 1989]##

Hicke: I wanted to ask you if you had anything more to say about Dean Prosser.

Kragen: He was a prolific scholar. He'd get in the library, and get thirty or forty cases all on the table. Then in twenty minutes he'd gone through them enough to get notes on them, and boom! they were gone. He was very fast, and he did all his own typing; he never used a secretary. He was a character in many ways. There were just lots of things he did that made a real character out of him.

But his hornbook on torts probably still is--in the ninth or tenth year after it had been in print, and after he died, it was still the largest selling hornbook of its type in the world, even though it was a little bit out of date. That's what West Publishing told me. I probated Prosser's estate; I handled the probate and made the deal where the family still gets something out of the new revised editions

which other people have produced. It was revised about two or three years ago. It's still selling very, very big, and the family is still getting--Mrs. Prosser died a couple of years ago, but the boys still get a return.

Prosser had lots of peculiarities. He was a very good lecturer, excellent class teacher. A lot of things you'd think he would do, he didn't care about. I know we presented proposals to him for various things--institutes and for grants and things. He'd, in effect, throw them in the wastebasket.

Hicke: Yes, you said he didn't like to put on conferences.

Kragen: He did a lot of things like that. We didn't realize it, but he had strong dislikes. He was very, very annoyed when we selected [Frank] Newman to be recommended as dean to the chancellor, because Newman had always sort of nitpicked on him. We had given Prosser every opportunity to suggest people and tell us things, but he just didn't. Then when we agreed on Newman, he was very annoyed and commenced a feud, really, against--he finally quit the law school, resigned, and went over to Hastings. He really gave the law school a very bad time for some time, although individuals, such as I, were very close to him. Mrs. Prosser and everybody tried to get him to calm down on this, but he never did. It was largely his enmity to Newman that caused it.

Hicke: What was that all about?

Kragen: I think it was because in faculty meetings--you'd have to know Newman. He loves to sort of challenge people and nitpick on things, as some of us thought--and a lot of it was not nitpicking. He would go after Prosser on things in faculty meetings that we all ignored. We never thought Prosser paid much attention to some of the things. Of course, a lot of very good things were brought up. But Prosser, I guess, developed a real feeling.

Newman tried hard to reconcile with him, and everything he did Prosser would misread. I was in Europe on a sabbatical, and Prosser was away on sabbatical. We were together at a meeting, and Prosser came to me and asked, "What do you think that Newman is trying to do to me? Trying to cancel my sabbatical and force me to come back and teach next semester." This was still in the summer.

I said, "No, what do you mean? And he said, "Look at the letter." The letter was nothing. The letter simply said, "If you want to, because I hear you are sort of bored," as he was, "with travel, we have the course that you want to teach and it's available." That's about what Newman said. And Prosser came back and griped all the time. It was a course he'd wanted to teach, that they'd sort of created and set up for him.

He got very crochety.

Hicke: Was he in ill health?

Kragen: No, no, not at that time. He became ill eventually. No, he was a very, very bright man, very smart, but had various idiosyncracies. But he was a lot of fun, and did a very good job as dean.

Hicke: What are some examples of things that he did?

Kragen: The people he hired here--Halbach, Hetland, and that group that he brought to the school. Although he always proposed first a bunch of his old cronies, who were very good people but older; we wanted to get young faculty. That was one of the things, I think. As I told you, it was the same thing as when I was hired. The faculty voted a year ahead of that to hire me, and he went and hired somebody else. But when they finally hired me, he was as nice and fine as he could be. I couldn't have asked for better treatment.

He built the school back again, there's no question about it. The school had lost a lot of its reputation, and Prosser went ahead, and under him we became a first-rate school again.

Hicke: Because of his appointments?

Kragen: The people he hired, and the way he insisted on the quality of performance. I give him a lot of credit. He did it. I think he was the man who really brought us to the stage where we could compete.

Hicke: Did he get additional resources from the state?

Kragen: I don't know. I don't think so. I don't know much about the budget setup, but I know he could persuade Sproul to give us nearly anything he thought we needed. He and Sproul got

along quite well, I think. You see, we were out of the Academic Senate, as your notes show, for quite a period. During that period we went directly to Sproul. Theoretically we went to the budget committee for appointments, but Sproul made the final decisions on all of that.

The Robbins Collection

Kragen: We did well in resources under the Prosser administration. He and Mrs. Prosser and Mrs. Sproul were absolutely vital on the [Lloyd McCullough] Robbins Collection--the canon law and civil law--the twelve million dollars we eventually got.

Hicke: Tell me how that worked.

Kragen: Robbins was a lawyer who did not graduate from here but became interested somehow. Prosser, I think, got him interested in the law school. Maybe Vernon Smith, too. I'm not sure who caused him originally to be interested, but he got quite interested in the law school and gave us a grant, originally for about a million dollars, for books on canon law and civil law. Then his wife died and he married the woman who had nursed her. We at that time thought we probably wouldn't get any more, because there was nothing left in the estate, as I remember; all was left to her.

His brothers, who were very wealthy also, sued on the grounds that the will was improper, undue influence, unsound mind, and so forth. Prosser and Vernon Smith testified in the case that they'd seen him every week, as they had, and that his mind was as good as it could be. As a result the widow got the estate. Prosser, Mrs. Prosser, and Mrs. Sproul cultivated her quite a bit.

But she became much interested in Holy Hill--the theological seminary up the hill there. She did get very interested in it, so we thought that was where the estate was going to go. But when she died, she left her entire estate to Boalt. There may have been some minor gifts, but basically we received about ten million dollars in value for the Robbins Collection. We have the largest collection of canon law in the world, outside the Vatican.

Hicke: Why is this collection based on canon law?

- Kragen: Because that's what he was interested in. But there's also the collection on civil law, and all of our foreign law collection is out of the Robbins fund. For example, international tax books that I'm interested in came out of the Robbins fund.
- Hicke: Are they kept in a separate--?
- Kragen: Yes, I think it's the sixth floor. It's locked mostly; you have to have entry. A lot of it isn't locked, but the canon law material, I think, is. There are scholars from all over the world who come to work on the canon law collection.
- Hicke: Did he have a basic collection of books and then donate funds to buy more?
- Kragen: I can't be sure of that. He may have had some books. What he donated to us was a lot of oriental artifacts, which we still have, I think. Every once in a while they're displayed. Very valuable.
- Hicke: Pottery?
- Kragen: Yes, various types of china. I haven't seen them lately. Tom Reynolds is the curator of that collection. He may know more about that.
- Hicke: So mostly the funds were used to buy books?
- Kragen: Buy books and to fund a director. We have a director of the collection. One retired, and we just hired a man from Europe who has a combined history and law appointment. He's the curator.
- Hicke: I know Harold Boucher--
- Kragen: Yes, Harold is very interested in some of that collection. I haven't seen Harold for quite a while. You see, his wife and I were classmates in grammar school.
- Hicke: He's gotten lots of historical information, some of which probably came from that library. He's very interested in legal history.
- Kragen: He was doing a big study on something.

Hicke: On wills and testaments.

Kragen: Yes, he did that, but there was something else he was doing. I usually see him at Boalt functions, but I guess maybe I haven't been to anything he's been to lately. I guess I haven't seen him for close to a year.

Hicke: So you would say this Robbins Collection is well used?

Kragen: Oh, it's well used. It's a tremendous collection. The money has been used very, very well. We've acquired a lot of things with it. This library would not be nearly as good if it weren't for the Robbins fund.

Hicke: It certainly is unique.

Kragen: Oh, yes. There's no other collection like it, outside the Vatican. We have Xerox copies, or some type of reproduction--[Stephan G.] Kuttner, who's very close to the Vatican people, went over and spent a lot of time in the Vatican. We reproduced a large portion of the Vatican library. It's up there; we have it. Anything that Kuttner thought was of importance, we reproduced. He obtained the right to do it.

Input on Faculty Appointments

Hicke: I want to go back a bit. You said the faculty votes on various appointments. Can you tell me what kind of input the faculty has?

Kragen: They do a little more now, I think, than we did; they demand a little more. They usually have presentations to the faculty now by the person who's interested on some learned subject--or less learned [laughs].

What we did was to go over thoroughly all the recommendations. We checked on everybody; we had a faculty appointments committee that usually did that. It checked the record and interviewed the individuals. We had them come to the law school. A couple of times when I was at some meetings in Washington--I remember we interviewed Phil Johnson and Dave Feller back there. We got all the information we possibly could from every source, and then

looked at all their publications, whatever they'd written. Then we appointed them as Acting or Visiting Professor--I can't remember which.

Hicke: Temporary?

Kragen: Temporary appointment--usually what we considered a three-year appointment--to see if they panned out. And some didn't. Most of them did, but some didn't. We did a very thorough job of trying to get the best people we could. We were looking for young people at that period, although we did hire some older individuals. We hired David Louisell from Minnesota, for example. He had been teaching for some years.

Hicke: What period are we talking about?

Kragen: In the fifties. Let's see, Judd Falknor was here. I can't remember, but we hired a couple of people with more experience in teaching. Then we hired this whole group of young people, five of them in one year, which was a lot for our faculty at that time. But we were growing very fast, and we needed the people.

Hicke: Do you know how long the faculty has had this power to confirm, or advise and consent?

Kragen: I really don't know. It was here when I came.

Hicke: So the dean makes suggestions and the faculty then investigates his suggestions?

Kragen: Yes, the dean makes suggestions, or the appointment committee looks around. What you do is you write the Yales, the Harvards, the Chicagos, et cetera, and ask if they have any suggestions for good young people who want to enter the teaching field or people who are in teaching who want to move. You know, all of us have friends in other institutions, and we'd write them. If we were looking for a tax person--in the early days I was the only one--I would write and talk to people that I knew.

Hicke: Would you take people just coming out of law school?

Kragen: We have, but that's infrequent. Usually they came either from another law school, from practice, or from court--law clerks to judges. Heyman and [John K.] McNulty--McNulty had been in practice for a year or so, and Heyman may have had a



Tax Department, Boalt Hall School of Law. Professor Kragen with Professors Babette Barton and Jack McNulty, circa 1985.



year of practice, too. They'd been law clerks for judges on the Supreme Court of the United States. Halbach had a graduate degree from Harvard, and I think we hired him right after he received the degree. I don't think Halbach practiced. [Justin] Sweet was practicing; Hetland had been teaching and practicing. Generally we hired very few young people directly from law school, practically none. They at least had, like [Jesse] Choper--Choper was teaching, I guess--or Heyman, one or two years with the court. Heyman was one of Warren's law clerks. Even if we hired them when they were graduating from law school, they usually were so good that they went to the Supreme Court or a circuit court for a year or to a law firm for a year.

Now, a man who just joined us in 1990 had been hired in 1989 but worked in a law firm for the year. That wasn't unusual. Rachel Moran, who's on the faculty now, we hired, but she went to Heller, Ehrman for a year before she came to us. As a matter of fact, she was supposed to come and teach tax. She worked for Jerry Robinson, and in about three or four months she called and said, "I want to come to teach, but I don't want to teach tax." [laughs]

Basically, we didn't hire right out of law school.

Hicke: What kind of guidance would you give a young professor?

Kragen: Sometimes we didn't give him or her enough. But as we saw the problems, we spent more time telling them what they needed to do. We sat in their classes and made suggestions. For example, we had a couple of tax people and I sat in their classes and suggested things that I thought could be helpful. Supposedly we worked with them on their writing, to see that they were going in the right direction. I'm not sure we do enough. I think we're doing more now. We've had some unfortunate experiences.

Hicke: Is there any kind of a formal program?

Kragen: No, not that I know of. There certainly wasn't. If there is any, it's very recent. But there's a committee appointed very shortly--maybe after the first of the year--to keep checking on the tenure possibilities of the young faculty.

Hicke: Do they have someplace where they can go if they have questions?

Kragen: Yes, they have an advisor or somebody that they can talk to about things.

Curriculum Changes

Hicke: At one point we talked a little bit about curriculum changes. I'm not sure if we covered that fully.

Kragen: I'm not sure, either. When I came there were two big changes. When I came, the first and second year were required; you had to take specified courses in the first and second year. The third year was elective in the sense that you took what you wanted. Now the first year is required, with one elective, I think, in the first year also; you have to take certain courses, but you have one elective. The second and third year are free. As a result--and also as a result of a number of other changes--there's been a great proliferation of courses. We must have twice as many courses as when I came here.

Hicke: Are some of these in response to student demands or requests?

Kragen: Some are, but most are in response to faculty's desires. If a faculty member wants to teach a course on a subject that he's writing on or doing something on--like [John] Noonan, for example, who was a tenured member of our faculty. He was writing a book on bribery, so he wanted to teach a course on bribery.

Hicke: A how-to course? [laughter]

Kragen: A lot of it is just faculty members' own interests. In fact, I have objections to some of the things that we do, because I think we proliferate too much as a result. A lot of the things that they should, in fact, be heavily encouraged to take, there is no real guidance.

Hicke: You mean some of the basics?

Kragen: Yes, because there are so many courses. They look interesting, they're fun, to some extent. To some extent they may be easier, and to some extent they may be harder. There are various reasons. I'm not sure that in training for the practice of law all of those are necessary. Some of the

others would be better, I think. That's my feeling, but maybe it's just mine. However, I think some of us feel that way. Maybe it's just the older people who feel that way.
[laughs]

I still have a big battle. When we went from mandatory courses to electives in the second and third years, one of the things we abandoned was a requirement that an individual who had not had a year of undergraduate accounting had to take a course in legal accounting, which I think is essential for any lawyer. We abandoned that, despite a big battle. [Richard] Jennings and I battled hard on that, but we lost it. So we only give legal accounting every once in a while now.

Hicke: What is legal accounting?

Kragen: Well, it's sort of a rudimentary course in accounting as it relates to problems of tax, corporations, and that sort of thing. There are a number of texts--casebooks--that do that. It's something that qualifies you, among other things, to read a balance sheet and understand the general terms related to business operations. I think it's essential. I've been trying to persuade my granddaughter, who's a junior here and wants to go to law school, to take a year of accounting. But her answer is that all of her friends say the accounting courses are so badly given that she doesn't want to take it. Well, I'm still going to encourage her, because I think everyone who is a lawyer ought to have some accounting--not a lot, but rudimentary accounting.

Hicke: What about any courses that would help a lawyer who's in business for himself? Or even in business in a law firm?

Kragen: We do a number of things now that we didn't used to do. We have the clinical program. We have a lot of our people go out to work in public interest law firms. For a time--I don't know if we're still doing it--we sent a group of them to criminal lawyers--a group of very carefully selected criminal lawyers--and had them work as sort of law clerks or paralegals or whatever you want to call them. We sent them to judges as "externs," they call it.

Hicke: This is the clinical program?

Kragen: Yes. And we sent them to certain government agencies and public interest law firms. They worked a semester, they

worked part-time. They were theoretically under the supervision of someone on the faculty. We do watch the type of supervision and what they're doing in these particular units. But we disposed of that.

Then we have a couple of courses, one on trial tactics or trial practice. Ed Heafey gave it for a long time; I don't know who's giving it now. He used to come in on Saturdays; you took it on a Saturday. Then we gave a course on appellate practice. It's been given for quite a number of years by Dave Feller, who has had a tremendous amount of appellate practice and is a member of our faculty.

So we do a number of things. As I mentioned before, I give a course, or have given a course, on tax planning for the business enterprise. That course, which I started in 1953, is a seminar limited to twenty students. We bring in a number of tax practitioners, and we ask them to prepare a problem on a particular subject which we've assigned to them, or which they've suggested they'd like to do and we think is all right. They prepare the problem and we give it to the students. Practically every student I ever had in the course, has said it really did a great deal for them.

Hicke: But these are all to help them do the work for their clients. I was asking about any that would help them survive in their own business as a businessperson--management, for instance.

Kragen: I don't know of any course that we give. There are CEB [Continuing Education of the Bar] courses on law office management. There are things like that, but I don't know of any course we give or have given in law office management; that's what it would be. No, we give one phase of it: professional responsibility, which really touches it. That's a requirement of the bar now, you know. You have to have a course on professional responsibility.

Hicke: That has to do with ethics?

Kragen: Yes, basically. It's not management. It's management in the sense that you don't get yourself in trouble. [laughs]

Hicke: I was thinking of a lot of stories I hear about the early days of law firms when lawyers didn't ever turn in their time and--

Kragen: Oh, I imagine that still happens now, but the money is so much more. When I was the managing partner for the Loeb office we had one of our partners who, no matter what you'd tell him, never kept his time.

Hicke: I think you told me about him.

Kragen: That happens in every office, I think. Maybe less now; I just don't know. My son-in-law, who's with McCutchen, must keep accurate records of his time, because every once in a while he tells me about a week they spent on a particular matter, and how much the time amounted to.

Hicke: I think the large law firms now have professional business managers, but still you have lawyers where there are just two or three.

Kragen: They just have to learn.

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Kragen: There's no question that they'd go broke, or they'd get themselves in all sorts of trouble.

Hicke: Like the one you worked for?

Kragen: Yes, he had bad management practices; bad personal management practices.

Frank Newman as Dean

Hicke: One other thing I'd like to ask you about is how you decided to nominate or select Frank Newman for the deanship.

Kragen: Well, Frank wanted it, that's one thing. We wanted to keep it inside. There was one other person who really wanted it, but there was more objection than there was to Frank. I guess it was not quite by default; that's not the right way to put it. And it was a mistake. Frank is a very good lawyer, a very good professor, a very good scholar. But he's just not a dean. He has too many interests outside the job of managing that office.

Hicke: You probably have to give up just about everything else.

Kragen: Yes, that's right. He didn't like being kept here; he wanted to travel all over Europe. Every time a human rights thing came along, he wanted to be gone. The faculty became very dissatisfied under him. He eventually realized that, after about four or five years, and he quit.

Frank was a senior member of the faculty, he wanted to be dean, and there was no real contest. If Prosser had said to us that he didn't want Newman as dean, we never would have selected him, I'm sure. I was on the committee. I was approached--I was vice chancellor then--and I definitely didn't want it. In effect, I had told them that as far as I was concerned, if I was going to do that sort of thing I was going to go back and practice and make money.

Art Sherry was another possibility, and he didn't want it. There were others who would have been glad to have it, I think, but there were faculty objections that may or may not have been valid to those individuals. We listened to what the faculty told us, and the young people were generally for Newman. The others of us were a little lukewarm, I guess, but we figured we were getting older; let the young people influence the decision. They really were anxious to have Newman, I think.

Research Funding and Publication

Hicke: Let's switch topics here. I want to ask you about funding research. I know that in 1953 you got funds to--

Kragen: I saw that [in your notes], but I don't remember it. I got funds for things like seminars, but I don't remember any funding for the study of local tax.

Hicke: This, again, came out of that Epstein book.¹

Kragen: Maybe I did, but I don't remember. I would think I would remember something like that. And I don't know where I would

¹Sandra Epstein, Law at Berkeley: the History of Boalt Hall (1979). Ph.D. thesis in School of Education, University of California, Berkeley, California. [unpublished thesis]

have gotten the funding; I would have remembered where I got the funding. I don't think I got it. Prosser was not very much for funding. The only thing he really approved of, because he loved travel in foreign countries, was the Ford Foundation program with Cologne. That, I think, was Riesenfeld, Ehrenzweig, and maybe Newman was involved; he probably was, but I just don't know. As I remember, it was Riesenfeld and Ehrenzweig, and Riesenfeld, I think, was the most important one in getting that Ford Foundation grant. We had a ten-year grant for exchanges with Cologne.

Then we got some other grants, and I can't remember the years. One was with Indonesia, one with Singapore.

Hicke: How about for doing research?

Kragen: We received some money from the state and from various sources, but I don't remember specific research money. We may have gotten it; I maybe just didn't pay any attention to it.

Hicke: You weren't involved in it?

Kragen: Certainly I was not involved in obtaining any money for research. I can't remember an instance where I did that, except where we had some campaign which incidentally got money for research. I mean, I was involved in the building campaign and others. But I don't remember anything that I personally received from the state. I did receive research money from endowment funds and from a Danish foundation.

Hicke: Do the professors engage in a lot of research?

Kragen: Oh, a tremendous amount. This is a very prolific faculty as far as getting out books and articles. It's very prolific. We have lots of books that have been authored or edited by members of the faculty. We've got a scad of articles always coming out of here. Too many. There are too many law articles from all the law schools [laughs].

Hicke: Yes, it's hard to keep up.

Kragen: That's right, too much is written. But you're required to do it for tenure. And for a lot of our people--I'm not one of them--their main interest was in publication. You know, Riesenfeld's eighty-one years old, and he's always working on new articles or new editions of books that he has. And

Jennings, who's my age, is working constantly on his book on securities regulation, which is clearly the most popular securities regulation book in the country.¹ And he's constantly working on it. And the younger people are always publishing.

Hicke: Is some of it because of pressure to publish?

Kragen: Well, it certainly is pressure to publish when you're getting tenure. I didn't have the pressure because I came in with tenure. But when you are trying to get tenure you have to publish, and there's a lot of pressure to publish then. After that it's basically because of interest. You get interested in a subject matter. Also, in this school especially--all the good schools, the really top schools, the top ten schools--the faculty feel that the recognition of the school in part depends on the quality and amount of its publications. So they put pressure on themselves.

Integrating the Faculty

Hicke: I'm running down the list of notes here--John Wilkins was the first black faculty member?

Kragen: Yes, as far as I know. We didn't have any other black appointed as a faculty member until John.

Hicke: He was actively recruited?

Kragen: Oh, yes. He was general counsel, AID [Agency for International Development], and we recruited him from there.

Hicke: Whose idea was that?

Kragen: That I can't tell you. I really don't know. I did not know John until we started talking to him. It was probably somebody on the appointments committee. You know, we were looking and somebody knew about him.

¹Richard Jennings and Harold Marsh, Jr., Securities Regulations--Cases and Materials (Mineola, N.Y.: Foundation Press, 1977).

Hicke: What kind of efforts were made for affirmative action appointments of minorities?

Kragen: I think at the time John was appointed it was sort of incidental. I think we thought at that time that it would be nice to have a black on the faculty, but there was no pressure to do it. We had Sato already, an Asian; we had some women--and we had been the first school to really have a woman on the major faculty.

Hicke: Way back.

Kragen: Way back. I don't think we felt pressure to do it [hire blacks]. I think it was because he was a good person. The fact that he was black was purely incidental, as far as my memory goes. As I remember it, we weren't looking for a black. But certainly, when we found somebody who could do the things that he did, why, it was delightful that he was also black.

Hicke: How long was he here?

Kragen: He was here for quite a few years, and then he developed a brain tumor. In those days, when you didn't have scans, you couldn't do as precise a job, you know, and he became paralyzed and could hardly talk and that sort of thing. He lived on for many years. His family still lives out in El Cerrito. But he was in a wheelchair. His mind was all right, but he couldn't get the words out; he was partly paralyzed. It was very tragic. He was here maybe five years or so, maybe a little longer, before that happened. I can't remember exactly how long. It wasn't terribly long--maybe six or seven years, but I don't think any longer than that.

Academic Senate Membership for Boalt; Separate Graduation Ceremonies

Hicke: In '61, the law school was restored to full membership in the Academic Senate. How did that affect you?

Kragen: It didn't effect any change at all [laughs]. We went through the committee stuff a little more, and we participated a little more than we had, but I don't think it affected anything that we did. I don't think it affected a thing.

Hicke: I was interested to read that the law school always kept its graduation ceremonies separate.

Kragen: Yes. That is certainly from the time I came up here. I don't know quite when it started, but '53 was the first graduation I went to. It was an informal, unofficial graduation which we had. One of the conditions was that we were required to tell our students they should go to the regular graduation in addition. I don't know how many of them did. When I graduated we were with the regular graduation, but I didn't go. I took my books and went up north to Lake Odell with my wife and my uncle. So I never went to graduation from law school. I went to my undergraduate graduation.

We advised the students that unless we had a reasonable representation, we'd have to quit this little graduation of our own. And I think we probably would have. I thought the big graduation was not a good idea. The last thing I did in the chancellor's office was to write a memo saying that we ought to quit this big graduation and go to smaller graduation ceremonies. Because the thing that happened was that as soon as they started handing out the diplomas, the big bunch of faculty on the stage there just got up and walked around talking and paid no attention. I mean, that's the important thing.

But it was a tedious thing, you know, with two thousand students, or whatever it is. Whereas here, nobody leaves, everybody pays attention. I went to the Poli Sci [Political Science Department] graduation this year, and it was a pleasant ceremony. Everybody paid attention while they were being handed their diplomas, and so forth. And in the smaller group the parents can get together with the professors so much easier. It's a much better system.

Garff Wilson didn't think so. He was the chairman of the committee on public ceremonies. He loves those big ceremonies. He's a classmate of mine and a good friend, but he got sort of annoyed at me with that memo that I sent out.

Hicke: We went to a couple of UCLA graduations of our sons not too far back, and they had a little reception within their schools before the ceremony (this was undergraduate). But then during the ceremony they had student speakers who really said some outrageous things to the assembled group.

Kragen: Well, that happens here, too. Luckily, I understand that this time everything went well. I didn't go to graduation. But we've had some times when the student speakers--and then the students select an outside speaker, and sometimes those have been awful. Sometimes they've been very good, surprisingly good. Peter Ustinov, for example, was excellent. But some of the others have been awful, and have no relation to law [laughs].

Hicke: Peter Ustinov probably doesn't, either.

Kragen: But he gave a talk on the law. A very nice talk.



VII VICE CHANCELLOR, 1960-1964

Appointment

- Hicke: Since you mentioned the vice chancellorship a couple of times, maybe this is a good time to tell me how you were appointed to that.
- Kragen: What happened, as far as I can reconstruct it, was that the University was going to take over the athletic program from the management by the ASUC. The background of why the regents had decided that we should--and that was a regents decision--I don't know. I just don't know. One of the members of the board of regents was Ed Carter, who was the chairman of the board, I guess at that time, and president of Carter Hawley Hale. Carter Hawley Hale were members--and he was a very important member of the board of directors--of the Retailers, of which I was general counsel.

Ed called me and told me that the University was trying to take over the ASUC activities in intercollegiate athletics, and he wanted me to agree to work with the chancellor's office to do that job. So I was sort of pressured. Anyway, I was interested in athletics, so I said okay. It was supposed to be about six weeks that I was supposed to take to set that thing up. After about two weeks, [Chancellor Glenn T.] Seaborg came to me and said, "I'd like you to stay on as vice chancellor and handle business, special events, all the administration--everything but students and faculty. It'll be a half-time job, and you'll have a secretary." That's what I had, and I taught half-time up here. That's the background of what happened.

Hicke: Why did you take that on?

Kragen: Well, I thought it would be fun. It would be a little change. I liked Seaborg. I didn't know he was going to leave, because he did--

Hicke: In the middle of the--?

Kragen: I don't know how long he'd been there. Two or three years, I guess, by that time. But I was there less than a year when he left.

Hicke: Then who became chancellor?

Kragen: Ed [Edward W.] Strong. That was an interesting development.

Chancellors Seaborg and Strong: A Comparison

Hicke: How do you compare the two styles of chancellors?

Kragen: Oh, entirely different. Ed is a lovely man, but is really not the sort of person you need with the strength to be a chancellor. Seaborg would make decisions, and although he relied on us, he would countermand us if he thought things were wrong. Basically, Strong relied on all of us much too much, and that caused some of our problems. He's a lovely, wonderful man, but he's a philosopher who lives a little bit, I think, in another world. But he did a lot of good things.

I was out by the time the crisis came. Seaborg never would have had that happen. In fact, I know that it wouldn't have happened as it did.

Hicke: Are you talking about the Free Speech Movement?

Kragen: Yes. It never would have happened the way it did if Seaborg had been there. Because the man I think was responsible for most of our problems wouldn't have been there any more, because Seaborg had intended to have him go back to his teaching at the end of the year and for me to take over. I was to take over student things, which I really didn't want to do.

Hicke: Are you going to name this person?

Kragen: Well, it was Alex Sherriffs. Everybody knows it. Alex is a very nice guy, but a guy who--I don't know how to put it, really. He just was more devious than he needed to be in handling things. Katherine Towle was the dean of students, and he sort of had his own underground reporting to him, and he second-guessed the dean of students on things. He did a lot of things that were bad judgment--not malicious or anything, just bad judgment. We would have gotten into trouble, but we wouldn't have been the first; we wouldn't have had the big fuss at the beginning. Because we really had it settled, and he made a dramatic error.

When Seaborg came back he came in and talked to me about the fact that he was leaving, and said he was going to recommend me for chancellor. I said don't, that I wouldn't take it. I said, "If I'm going to do something like that, I'm going to go back and make money." I knew what a job it was. I didn't anticipate anything that happened; I just anticipated what we were doing.

Hicke: Just the normal things.

Kragen: Yes, because I was working like a dog. I was just running all the time at half time as vice chancellor. I did things that would today cause riots, but in that day they accepted them.

Hicke: Such as?

Kragen: For example, I refused to let Malcolm X speak on campus. That would have caused a mammoth demonstration today.

Hicke: It would have caused one if he'd come, too, probably.

Kragen: Oh, yes. That's what I felt. That's the reason I did it. It wasn't that I had any prejudice one way or the other on it; it was just the background of what he and his followers had done. But they accepted it. I had little arguments with the people, but never things like today.

Strong was just a sweet guy. He was a really nice man, and very, very intelligent and everything, but not one who could take control, I think, in a tough situation. And I think [President] Clark [Kerr] ran over him a little bit in part of the area. That's one of the things--Seaborg went to

Clark and recommended me, I am told; that's what Seaborg told me. Clark said, "We can't have a lawyer as chancellor." [laughs] It changed later, and we have [Ira Michael] Heyman.

But you never know. If I was faced with having to say no, I might not have. You know, you don't know, when you're offered the thing. But I knew I didn't want it at the time. Then he came and said, "Strong is going to be acting, but we're going to look for somebody else." And Clark appointed Strong as the permanent chancellor after a while. Strong had been a vice chancellor with me; the same setup as mine. He had the academic end.

I think the trouble was there; he certainly didn't cause it. But if we'd had some changes in personnel, I think we might have had more conciliation and more efforts to settle the thing before it got out of hand. It would have come; it was the times. But, as I say, I don't think we would have been first.

I enjoyed the chancellor's office. I enjoyed working with Seaborg and Strong both. From my standpoint, Strong gave me more leeway than he should have. And I had some battles with Clark on various things, because I was never one to keep quiet.

Hicke: Can you give me some examples?

Kragen: Well, for example, we needed a football coach. A couple of the regents wanted a particular man. Clark wanted me to work out the appointment, and I told him, "We can't," and I had a big argument with him. He named me a couple of regents who were going to raise hell, and I said, "I'm sorry. There's going to be more hell raised--."

Then we had an appointment we made that he wasn't going to approve--because at that time the regents and the president had to approve it. I raised a lot of hell, and he finally said, "Okay, it's your burden, your trouble." And it went through without any problem. I think it was maybe a mistake, our appointment [laughs], but that was another thing.

Hicke: So one of your duties was appointment of--

EDWARD W. STRONG
155 EUCLID AVENUE
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Phone: 415-524-0342



May 10, 1977

Mr. Ken Kragen
Management Three
9766 Wilshire Boulevard
Beverly Hills, California 90212

Dear Ken:

During the period your father served with me in the Chancellor's office, the most publicized action he took barred Malcolm X from an appearance on campus. A student group had submitted an application to the Dean of Students which, if approved, would have scheduled a public address. University rules prohibited use of University facilities for the purpose of propagating religious doctrine or of making converts to a religion. What was the situation with respect to the proposed speech of ~~Malcolm X~~ Malcolm X?

Adrian investigated and concluded that the speech proposed violated University rules. His decision gave rise to a storm of protest. The tempest raged in columns of The Daily Californian and was reported in the metropolitan press. An exhibition of this reaction to his judicious and courageous course of action would, as it should, give him pleasure in recalling a dramatic event.

If Glenn Seaborg or some other person familiar with Adrian's devotion to furthering the fortunes of Cal in intercollegiate athletics has not provided you with an exemplary instance, I can do so in connection with the appointment of Ray Willisy as the head coach in football. What went on behind the scenes is not a matter of public knowledge, but came to involve President Kerr and Regent Pauley. Adrian was seated in my office when the climax was reached — a telephone conversation with Pauley who wanted a "big name" coach appointed (and who had a candidate). How does Adrian now remember what took place?

Cordially yours,

Ed
E. W. Strong

Kragen: We recommended. I was the one to whom the athletic department came with final decisions. I couldn't make the final decision, but normally Strong and the statewide administration went along with what I recommended. We had various problems from time to time where they didn't and we had difficulties, but generally they went along. They went through me, so I certainly wasn't the final decision.

Relationship between Regents and Chancellors

Hicke: Can you tell me a little bit more about the relationships between the regents and the chancellor's office?

Kragen: As far as we were concerned, generally it was pretty good. In most cases we got what we wanted, under Seaborg especially, because he was really strong in that sense. For example, the athletic department had to move, and we had to have a space for it. We didn't have any space, except we had the cafeteria--you probably weren't around at that time--an old wooden building in the center of the campus, about where environmental design is--in that courtyard, as I visualize it now.

We got that, and I spent \$30 thousand, which was a lot of money in '62, renovating it for them. We were just ready to move in, and Regent [Donald] McLaughlin found out about it. He brings it up at a regents' meeting, and he says, "We can't do that. You'll have to wreck that building; that building can't remain." I mean, where were we going to put the athletics department? We'd spent the money. Seaborg went to bat and raised so much hell that McLaughlin backed down.

But generally, in my experiences with the regents, we got along quite well. Once in a while they'd put their foot down on something, but most of the time we got what we asked for, to the extent that it was approved with the president; like budget things the president always had to approve. We got pretty much. I didn't go to all of the regents' meetings; in fact, I didn't go to a lot of the regents' meetings. But when I went it seemed to me that we were in pretty good shape.

We met with them a lot; we had them to various functions. I was much involved with--you know, we had [President John F.] Kennedy visiting, we had this one and that one visiting, and we always had the regents invited to the functions. We seemed to get along quite well.

The regents were a little different than they are now. There were no public regents.

Hicke: What do you mean, no public regents?

Kragen: We didn't have anybody who was really not approved by the president of the University, basically. Since a certain time we have more regents who are supposed to represent the public, and we have a student regent now. Those things we didn't have.

Hicke: They were all appointed?

Kragen: They were all appointed by the governor. Now we have more, in effect, outside regents. In the [Governor Earl] Warren days they were basically University of California people, and also pretty much during Pat Brown's time. [Governor] Jerry [Edmund G., Jr.] Brown appointed a lot of them, too. Reagan appointed Stanford people--[Glenn] Campbell, [Robert O.] Reynolds, and maybe one or two more--which outraged the Cal people.

But the relationship as I saw it was a good one with the regents.

Hicke: You indicated that they had something more of a veto power than they do now.

Kragen: I don't remember when that was finally ended. Going back to some incidents involving--

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Kragen: Red Sanders was the football coach at UCLA. There were a lot of problems with him. He was a fine football coach, but after one big episode the regents wanted him fired. They found that he had a long-term contract, which Chancellor Frank Murphy--I think it was he, but I'm not quite sure--had given to him when he hired him. The regents were advised they couldn't do anything about it. When that happened they decided that hereafter for football and basketball--I think

basketball--I think those were the only two sports--hiring of the coaches had to be approved by the regents. And for a long period we had that situation, where we had to go to the regents on a football coach and on a basketball coach, which was very difficult.

We were ready to hire a football coach, during the time I was involved, who was tops. I mean, there was no question. He was willing to come, but he had to have an answer, because of some other problems, within three days. Clark said, "I can't get it for you," and we lost him. The regents wanted that control because of the Sanders episode. I'm not sure when they abandoned it. It changed back again so that we appoint our own coaches.

Hicke: Did they ever have control over any other faculty positions?

Kragen: Well, technically they have all tenured, but they've delegated it to the campuses. And a lot of things they've delegated. Technically they have control, but they delegate a lot of things.

Hicke: So any time they wanted to they could--

Kragen: Oh, yes, they could take control. They still have control over all the main officers of each campus administration. I don't know how long we've had the delegation, but there's been a delegation for faculty for a long, long time. Certainly before I came here.

Responsibilities as Vice Chancellor

Hicke: What else did you do when you were vice chancellor?

Kragen: When I was vice chancellor, my job was all the business end of the campus operation. I had the business office, the police, personnel--all that sort of thing. They all responded to me. And then all special events. If we were putting on a University meeting, if the King of Sweden came here--all those things were my responsibility. You really worked. As I say, I was half-time, and I taught a course here three or four days a week. As vice chancellor I had a secretary, and that was all the staff I had.

When you look at the campus organization today and you see what we did--and I wasn't alone. Strong and Sherriffs, who were the other vice chancellors during part of my period, were both full time. One had students and one had academic. But they didn't think the rest of the stuff deserved more than half time. And I wasn't willing to do it more than half time. I mean, I wanted to continue teaching.

When you look at the size of the staff--Strong had a half-time assistant, a fellow named [John] Jordan, I think it was, in either the history or English department. But that was it. It was a very small organization. I don't know how big it is now, but it's really big. And there's a lot more work, a lot more problems than we had. As usual, things grow [laughs].

Hicke: Yes, sometimes that old Parkinson's law--

Kragen: Yes, that's right. I know, because I was president of the Emeriti Association last year, and now as chairman of the Emeriti University Relations Committee of the Academic Senate, I've been dealing with the vice chancellors. There's a vice chancellor I deal with, there's an associate vice chancellor I deal with, there's an assistant vice chancellor I deal with. [laughter] Eventually they pass the buck from one to the other.

Hicke: How long were you the vice chancellor?

Kragen: A little over four years--four and a half years, I think.

The Free Speech Movement: Liaison to Alumni

Hicke: You were appointed in '60, right?

Kragen: I was appointed in January of '60, and I left in August of '64.

Hicke: Oh, you did just miss the Free Speech Movement.

Kragen: Just missed. I tell everybody that's why the trouble started: I left! But I was still involved, actually. In the first place, Strong had asked me to continue some sort of liaison, without an appointment, between both the athletic

department and the alumni. So I sat in on the alumni council, and I did things with the athletic department if they had problems for quite a while. Then when [Martin] Meyerson came I continued doing that, and then when Roger Heyns came I continued doing it. Not athletics; I continued doing the alumni, I should say. So I was still involved.

And then, during our 1964 troubles, after about a month or so of things being hell on wheels, my daughter, who was a junior here, called me and said, "Dad, we're getting all these talks by these Free Speech people, and nobody from the University ever comes up"--she was in a sorority--"and talks to us." So I talked to Strong, and I assembled a faculty committee which went around to the fraternities and sororities and talked. Then I took on the job of trying to answer all of the requests from organizations throughout the state to give talks. I went from one end of the state to the other, giving talks on what was happening at the University. So I was connected to that extent.

Hicke: How did you explain all this?

Kragen: I told them, in effect, what had happened, and that actually it was only a small portion--and it was--of the students who were involved, other than when something started and students joined in things. And I tried to tell them what our problems were and the mistakes we'd made and the things we were trying to do to solve them.

Hicke: What kinds of organizations did you talk to?

Kragen: I talked to Rotary Clubs, Lions Clubs, alumni groups, breakfast clubs. All sorts of things--any group that wanted somebody to talk. I made an awful lot of speeches. It was the same speech, basically, so it was not hard. But I did a lot of traveling, and I was teaching a full load by that time, so it was a little hard to do. But I believed it was necessary.

Hicke: For how long a period?

Kragen: Oh, for about three or four months. It lessened as time went on.

Hicke: In your continuing role as liaison, did anything else memorable happen?

Kragen: Not really. I don't remember anything special. I just tried with the alumni, for example, to see that--especially in this time--the alumni didn't take a position that was adverse to the University. I talked to them. And I served as a sort of liaison to the Alumni Council for many years. During the Heyns administration I became Boalt Hall's representative to the Alumni Council while I represented the chancellor. I was mainly trying to answer questions for them on the activities and attitudes of the administration. You know, there was a lot of pressure by some of the alumni to take some positions which were very adverse to the best interests of the University. That's what I was spending most of the time trying to avoid, and with fair success.

Hicke: Did you deal with the state legislature at all?

Kragen: Not in that period. I dealt once or twice for the administration with problems with the state legislature, but my dealings with the legislature were mainly for the Retailers, not for the University.

Theory of Management Positions

Hicke: It's interesting to me--I mentioned that I found a lot of lawyers who perhaps weren't very good business managers--that you've been in several management positions for which you had little or no training.

Kragen: No training! [laughs]

Hicke: So how do you explain that?

Kragen: That's what lawyers did in those days, and what the University did. They wanted the faculty involved in administration, and as a result they selected people--well, they selected them to some extent because they thought they had some management abilities. I think one of the reasons that Seaborg wanted me to be vice chancellor was that I had been fairly lucky in decisions that I had made, and it looked like I knew how to get things done.

For example, I was chairman of the committee that supervised the building of the dorms here. Clark had appointed me to that; he was still chancellor then. That had

been a fairly successful operation, so there was some background they thought that I had. Sherriffs had no real administrative experience. [William] Fretter had some experience and ability. Some of the others, yes and no. In the days when the University didn't have the problems that we subsequently had, it was no problem.

Theoretically we hired managers at the lower-level positions. We had a business manager, we had a personnel manager. The whole theory was, I think, that they didn't want the business or the management people to overrule the academics. So they put the academics at the top jobs. And that was true of practically every university, until they got in trouble--financially, usually. Then they started looking for people with more management ability.

Hicke: I guess it's the same idea as the civilians ruling over the military.

Kragen: That's right, the same thing. I think that was it. The academics wanted to run the operations so that what they believed were the academic needs and the academic goals were preserved. There's a lot of merit to that, and the place ran pretty well. Clark was a manager; Clark had a lot of management experience. Seaborg didn't, but he was a pretty good manager. Well, I guess he did, because he did some management up at the lab. Strong had some with relation to the Lawrence [Berkeley] Lab.

Presidents--I was there under William Wallace Campbell, who had no management ability. Sproul had been comptroller of the University and had had a lot of management experience. He wasn't an academic. [Charles] Hitch had a lot of management experience. [Harry] Wellman had some. I don't think [David] Saxon had any, and I think it showed. [David] Gardner has had a lot of management experience.

I think they're looking more at those things in universities, but in the early days the University was looking for somebody with a high reputation as an academic, basically, for all the jobs.

Hicke: And they were lucky if somebody like you came along. Clearly you do have management abilities.

Kragen: Well, a little bit, not very much.

Hicke: Even Loeb picked you out for that.

Kragen: But that wasn't the criterion they were looking for.

Affirmative Action

Hicke: I think we've talked about minority students. I think it was in the seventies when--

Kragen: Well, we always had some, but we started in the seventies, really, actively recruiting, and letting in students with lesser academic records who were minority students-- "disadvantaged" students, supposedly.

Hicke: How did that affect the school?

Kragen: Oh, I think it changed the school quite a bit. I think the first thing it did was change the retention rate very materially. Whereas when I first came here I think 25 percent were lost one way or another the first year, it got down to maybe 1 percent, and less than 1 percent now. There's practically none now.

Hicke: The retention increased?

Kragen: The retention increased materially. Attrition did not increase. We admit now, let's say, 270 students this year. Except for a few who decide they don't want to be lawyers, or they want to go somewhere else--very few--we will have the same people graduate.

Hicke: What's the connection there between lowering the standards and a higher retention?

Kragen: Simply because, I think, if you lower the standards for admission, you lower the standards for grading. My theory on the minority students is that you make mistakes--you make mistakes on non-minority students, too--but generally minority students, if they have the same educational background, can do as well as Caucasians. I think there's nothing that would prevent them. But a lot of them have various types of backgrounds or come from schools that don't equip them. What we should do is what we're now doing for athletes. We should spend a lot more time after they're

admitted getting them prepared so they can meet the standards. And we don't.

I think I told you I had a proposal one time here, and I had the funds promised, to have any special admission student come here through the summer. We'd pay them a stipend that they could live on, and they'd take one or more courses-- that wasn't worked out. If they passed those courses, then they'd go on into the regular semester. But we'd also do a lot of orientation as to how to analyze, how to research, and things like that during that period. I thought they'd be much better equipped to compete if they did that. I didn't get any votes from my faculty, or from the minorities. The minorities said, "We can't be second-class students." And I think it's wrong. I think for their own sakes they'd be much better off. What the hell if you call them second-class students? What difference does it make? They're not second class; we're trying to help them.

We do that with athletes. Athletes now are required to go to study hall, they're required to take certain writing classes and use of the library and that type of thing. If they're soft in some subject, they get one-on-one tutoring. We ought to do the same thing.

Now, there are students who don't need it, and you can work that out in various ways. The problem is that when we get these people in--there are times where I think that if we kept the same rating standards that we'd had when I first started here, we would have flunked out 75 to 80 percent of the special admission students. That's my opinion, having seen them in the second year. I did the same thing; I mean, my grading standards went down. Some of my faculty colleagues will deny it, but you look at the record. They say, "Oh, the record is less because we're tougher on admission." We're not tougher on admission on the minorities. Whereas I'm in thorough agreement with the program, I just don't think we do everything the right way.

Hicke: It seems to me that would eventually have the effect of making it more difficult for minorities to find jobs. It would be hard for the large law firms to recruit minorities because they end up going through a school with lower standards.

Kragen: I think that happens. There's a portion of the minority students who do quite well, and those are sought after.

Hicke: We're really not talking about minorities; we're talking students without the proper background.

Kragen: Yes, that's right. But the students generally who go through school at the lower level--you know what the record on the bar [examination] is on the minorities; the record on the bar is abysmal. It's a little better now than it was, but it's really awfully bad. As a result, you don't get in law offices because you haven't passed the bar. The good ones are sought after.

They talk here about having a wider spread on the faculty. This faculty, I'm sure, would love to have good minorities--good blacks, good chicanos--but every time we find one, all the good schools and the law offices are competing for him or her. Everybody is competing. So we get some. We hired two black people last year, and we hired a number of women. This Coalition for a Diversified Faculty, they just want you to hire minorities, regardless of quality, as far as I can see. I'm sure we want to hire qualified minorities.

Hicke: The Bar Association in San Francisco just set quotas for law firms. They set a quota for law firms to reach a certain percentage of minorities.

Kragen: I just don't see how a law firm could or should do it.

Hicke: All the large ones have agreed to it, but they don't want to lower their qualifications.

Kragen: If you need to meet your quota by hiring people who really aren't qualified, that's crazy. That's the problem of the whole system. My feeling has always been that if we spent more time working with them, a larger percentage of the minorities would be able to do the job quite well, pass the bar. Because I don't think there's a difference in mental ability; there's difference in background and training and motivation. And families--I know how my son-in-law and daughter push my grandchildren. I mean, they don't push them, but they motivate them. In some of the minority families that isn't true.

Actually, in my own family--it wasn't a minority family, but in my family nobody had been to college. My parents were helpful, and they were better than I know some of the

minority families are that I've seen and hear about. But there was no motivation to go to college; nobody suggested it to me, nobody ever expected me to go to college. Luckily, I was motivated by myself. But in a lot of the families where nobody's ever been to college, and they're sort of depressed for various reason, you just don't get support. I think it's up to us to do more if we want to continue such a program.

Hicke: I think your idea would really have a multiplier effect.

Kragen: I really was enthusiastic. But the theory was, by my own colleagues and by the black and chicano organizations, that this would make them second-class students. Now, there was a way, possibly, that they might have been more willing, but I wasn't willing to propose it that way. That is, if we gave them the money and let them take the course, and whether they flunked or passed it didn't make any difference. Well, I just thought that was throwing away the whole concept and I would not agree.

Hicke: Throw the whole thing in with the program for athletes, and then it would be a status symbol instead of a second-class student symbol! [laughs]

Kragen: You know, I've just gotten a report. Bob Price, who's on the faculty here, made it. It shows that the black athletes have a retention--that is, being here four years or more--which is 84 percent, as against the general black population of 50 percent. Because of the motivation to stay here, and the push; we require them to do certain things.

Hicke: I think that would certainly do the entire practice of law--

Kragen: Oh, I think it would help. Claude Hogan, who used to be with Pillsbury, was the advisor, or maybe a director, of a foundation, and he offered me the money to try it for one year. We never made the formal proposal, but he assured me at the time that they'd come up with the money.

Hicke: We did talk about the Earl Warren Legal Center.

Kragen: Yes, I think so. Incidentally, those dates you have on Jim Hill--I don't remember the exact starting date; I think it was after 1960, but he was here until this last year. He was assistant dean until last year; he just retired.

Relationships with Bar Associations and Alumni

Hicke: How about relationships with the bar associations?

Kragen: We've always had good relationships, but not as good as I felt we should. I have always pressed for our doing--as some other schools do--more programs at the school that were directed toward assisting the bar. I did a number of them.

Hicke: Such as what?

Kragen: Well, I did the one on entertainment law; I did one on atomic energy law; I did one on trademarks and trade names; I did one with Arthur Sherry on judges. I can't remember all of them; there were half a dozen of them. I felt we never did enough, and we still don't in that area. Some schools do a lot more, and they have a continuing program for bar members.

But, of course, one thing in California that sort of makes it a little more difficult for the law schools generally, is the Continuing Education of the Bar program. It pre-empted the law schools to some extent. But there are specialized things that we could do. Like USC does a tax law institute. I think we should have done one up here; I could never get support for it. Entertainment law USC does now, because I felt after the first time that it should be done but that we weren't the place to do it, and I really didn't have much support from the dean on it. But there are things of that sort that the law schools could do, and some of them do, that would be closer to the bar.

That was one of the theories on the Earl Warren Legal Center--that we'd do this type of thing. And we really never have carried out this idea. We've done a few specialized things. We're doing more things now, but I don't think they're for the general bar.

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Kragen: We're doing things for our alumni, for example. For a while we put on seminars just before the annual meeting of our alumni here, but they weren't very successful so we quit that. We do some things, but not as much as I would like to see done.

We have a good relationship with the bar, in the sense that our faculty are nearly always willing to talk to the bar. If a bar association wants a faculty member to speak, normally the invitation is accepted. A few of our faculty do have some direct activity with the bar people. I think we've got fairly good relationships, but my problem is that I don't think we promote them enough or do enough.

Commission on Unemployment Compensation, 1950s and 1960s

Hicke: I have a note here to ask you about the Commission on Unemployment Compensation. That probably goes back.

Kragen: Oh, yes, that goes back. It was not called that. The appointment by Goodie [Governor Goodwin L.] Knight and Pat Brown was for the advisory council. When I was lobbying, the main thing I did was taxation and unemployment insurance. I became what would be considered, during that period, an expert. They were required, I think it was, by law to set up an advisory commission or committee, and I was appointed to that and served for quite a few years. We met quite a number of times a year--I can't remember exactly how many times, but quite frequently--to go over various problems of the department, and problems in relation to the appeals system, and problems in relation to various things that would come up.

We had representatives--for example, Charlie Scully represented the AFL-CIO. There were eight or nine of us on this commission, and we did a lot of looking into the things that were happening in the state Department of Unemployment (as I guess it was called then; it's now called Human Resources or some such thing). We were all people who were, I think, pretty politically connected. That is, I was representing industry before the legislature; Scully represented labor; others represented various other interests.

One time the committee decided that we ought to find out what was happening nationwide on various phases. So Scully and I were appointed--we got along very well; we fought like cats and dogs in committee, but we were personally good friends--and we went on a trip. We took our wives and went on a six- or eight-week trip. We went to New York, Michigan,

Ohio--five or six leading states--and looked at their unemployment insurance, talked to their people, found out what they did and how they did it. Then we reported back to the commission. A few of the things that we thought were okay were adopted.

I served on that for some years, until they changed the department around, I think, and they decided not to have the commission any more. A new governor, I think; I don't know exactly what caused it. But I was on it for five or six years at least.

Hicke: This was in what period?

Kragen: I think Goodie Knight and Brown both appointed me. It was in the late fifties, early sixties.

Retirement, 1973-present

Hicke: I'd like to ask you now how and why you retired, and what you've been doing since.

Kragen: Well, I sort of retired for two reasons. We had mandatory retirement at sixty-seven. At age sixty-six I had an offer from the Steinhart firm in San Francisco to become a counsel to them. I went half time for a little while, but they wanted me full time and they wanted me as soon as possible. I thought about what I was going to do when I had to retire in a year, so I took the opportunity and retired.

When I gave the notice of retirement it was immediately, for some reason, given to Marv Anderson, who was the dean at Hastings. He contacted me and asked me to teach there. But I'd already committed myself to Steinhart, and I just didn't think I could do both. So I said no.

Let's see: I retired at the end of the spring semester of '73, and at the end of '73 Hastings got caught short. The man who had been giving the course on corporation and partnership tax law suddenly took a job with Boise Cascade. They were caught short, and they asked me if I would help them out. So I agreed to do that, and I liked it. I taught there and I thought it was fun. So the next year I agreed to

teach two courses for them--a course each semester, that is. That was '74 and '75.

In '75 I decided that I didn't really care that much about practice, and it was pushing me. I was working a little too hard, as far as I was concerned, for a retired person. So I quit the Steinhart office in the fall of '75 and went and gave more units at Hastings. I never taught full time at Hastings; I never wanted to. I taught there until '80.

I gave courses both at Hastings and at Boalt, and I just decided that was too much. Boalt wanted me to give at least one course each semester, so I said okay. I quit Hastings and became officially emeritus at Hastings, and I've not taught there since. I think '80 was the last year I taught there.

Hicke: And you've been teaching here?

Kragen: Except this year. I may teach in the spring, and we talked about a fall teaching. I told them last year, and I've told them for the last three or four years that they ought to get somebody, and that I wasn't going to teach any more, but I did. This time I'm not teaching. There's a possibility that I'll give a seminar next semester; we're going to talk about it a little. But not unless I get somebody else to take certain parts of the burden.

Hicke: I think you've certainly contributed more than your share to the University.

Kragen: I don't know about that, but I've been around a long time. When you're eighty-two, you ought to be less active--although Riesenfeld is teaching two courses at Hastings and one at Boalt, and he's a year younger than I am, that's all.

Hicke: Let me just ask one wrap-up question. Is there anything that you can think of that we haven't covered?

Kragen: I can't remember exactly how much we've done on Boalt.

Hicke: What we haven't done is bring it up to date.

Kragen: No, we really haven't. I don't think we talked at all about sabbaticals and some experiences I've had on those. And we haven't talked about my family at all. I told you the story

about the tape I did myself and sent to my son. He came back and said, "Dad, this is a great tape, but I can't see when I was born." [laughs]

Then there are some of my general experiences in later years here at the school.

VIII FAMILY AND SABBATICALS

[Interview 6: September 28, 1989]##

Marriage and Family

Kragen: I couldn't remember whether we said anything at all, which I think I should, about the family.

Hicke: I definitely want to talk about that, so maybe that's a good place to start. When did you get married?

Kragen: I met my wife on a blind date at her sorority on October 12, 1928. We got married on June 4, 1933. I had just finished my second year in law school.

Hicke: Can you give me her full name?

Kragen: Her name was Billie Velvyl Bercovich.

Hicke: Is Billie a nickname?

Kragen: Her true name, as we had to do on passports, was Velvyl, which means William. She was named for her grandfather.

Hicke: It means William in which language?

Kragen: Maybe in Hebrew. I'm not sure whether it's Hebrew or German. I don't think we even put it on our marriage license. She was always Billie, and it made it much more confusing, because a lot of people think that Adrian is a girl's name. So it was Adrian and Billie.

In fact, down here I took a car in--we had two cars at the time--and it was registered in Billie's name (the other one was registered in my name). I took it in to this Pontiac place that was then on Telegraph Avenue, and the mechanic there--whom I became very friendly with over the years--no matter what I told him, he called me Billie from then on.

Have I told you some of the experiences I've had with my name? When I became deputy attorney general, I got a letter from Who's Who, congratulating me on my appointment and asking me to send them a biography immediately, as they wanted to include me in the next issue of Who's Who in American Women. I've had a lot of those things over the years. A lot of times you'd get things addressed to Mr. and Mrs. Billie Kragen.

[The following supplementary material was provided by Professor Kragen in written form]

I would like to include in this history some material about my immediate family. As I mentioned earlier, I met my wife when she was a freshman at Berkeley and married her in 1933, the year after she graduated. I had just finished the second year at Boalt and was enrolled to take the corporations course in summer session, so we honeymooned in the interval between the end of classes and the start of summer session. We first went to Yosemite, which neither of us had seen before. The first day there I encouraged Billie to ride a bike, something she had never before done, and she fell off and injured her arm, and I had to dress her, comb her hair, etc., on the rest of the honeymoon, which we spent touring southern California.

Billie was a very accomplished violinist. She was in the UC symphony orchestra and a violin choir when I first met her. Later she was with the Oakland Symphony Orchestra, and when we moved to Los Angeles she joined the Los Angeles Women's Symphony Orchestra. After we returned to Berkeley she became active in many University-related organizations, such as Prytanean, the Faculty Wives Section Club, and the Foreign Students Aid Committee. After her death on May 9, 1987, some of these organizations created special awards in her memory.

Our first child, Kenneth, was born in Berkeley on November 24, 1936. He was a very active person from his beginning and an extrovert. He was always a leader and was involved in all sorts of activities--both in high school in



Adrian and Billie Kragen, fiftieth wedding anniversary, 1983.



Honor thy family

Adrian and Ken Kragen, father and son, are both recent recipients of high awards from Cal. The younger Kragen, featured on our December cover, is 1986 Alumnus of the Year, the highest honor bestowed by the California Alumni Association. He will be guest speaker at the Association's annual Charter Banquet, which will be held at the St. Francis Hotel on Friday, March 20. For additional information and for formal invitations to the black-tie optional event, contact Diane Koch at the Alumni House, (415) 642-1574.

Adrian Kragen, along with Richard W. Jennings and Stefan A. Riesenfeld—three professors emeriti of great renown at Boalt Hall—were invited to a dinner late last October in San Francisco. In a well-kept surprise, the dinner turned out to be in their honor. Former Secretary of the Treasury G. William Miller, Boalt '52, chairman of Boalt Hall's Distinguished Professors Project, announced that endowed chairs have been established in the names of the three professors, who "have enriched generations of law students who have gone on to serve well and faithfully their communities, their nation, and their society."

San Francisco Chronicle
May 14, 1987

Billie Kragen

Billie Kragen, the wife of Adrian A. Kragen, a professor emeritus at the University of California at Berkeley's Boalt Hall School of Law, died Saturday at Alta Bates Hospital. She was 76.

An East Bay native and a 1932 UC graduate, Mrs. Kragen was a violinist for the Oakland Symphony Orchestra. She was active in many university organizations and had served as president of the University Section Club.

In addition to her husband, she is survived by a son, Kenneth of Los Angeles; a daughter, Robin Merritt of Moraga, and four grandchildren.

A memorial gathering is being planned for June 13 at the law school.

Contributions are suggested to the Billie Kragen Fund for the Young Musicians Program, University of California, Berkeley, 94720-2499, or the Adrian and Billie Kragen Scholarship Fund, School of Law, UC Berkeley.

Los Angeles, and then at Berkeley when we moved up here. At UC Berkeley he was freshman class president and later Homecoming Week chairman. In addition, he represented Time-Life for educator sales. At Harvard Business School he continued to work for Time-Life and started a company to produce concerts. Upon getting his M.B.A. from Harvard, he started on a career managing entertainers and has been very successful in this and in the production of numerous television shows. He was the guiding force behind the "We Are The World" and "Hands Across America" charitable enterprises. He was UC Alumni Association Alumnus of the Year in 1986. He now lives in Los Angeles with his wife, Cathy Worthington, and is the parent of a daughter born March 9, 1990, Emma Catherine Kragen.

Our daughter, Robin, was born February 20, 1943. She was very different from her brother: quieter, and for her first fifteen years quite introverted. However, she blossomed and went to UC Davis and then to UC Berkeley, from which she graduated in 1965. In 1966 she married Robert Merritt, a graduate of Boalt Hall. Immediately on their return from their honeymoon they went into the Peace Corps and were assigned to Peru, where they worked with Indians in a little village high in the Andes. After Robin became severely ill they left the Peace Corps and settled in Fullerton, California, where Bob taught at Fullerton State and practiced law, and Robin worked for the telephone company. In 1969 they moved back to the Bay Area, and Bob went to work for the Steinhart office, and Robin had their first child, a daughter, Kimberly. Bob is now a partner in the McCutchen firm. They have four children: Kim and Kevin, who are at UC Berkeley, Kristin, who is at Campolinda High, and Katherine, who is in elementary school.

[end of supplementary material]

Kim and Kevin are both alumni scholars. I was delighted when I was told that Kim was going into Prytanean, because that was one of my wife's favorite things. Billie was very, very active--not up in the front, generally, but she worked very hard on all sorts of organizations that she believed in. She was a very, very caring person.

Hicke: I understand she did contribute to the warm feelings among the faculty.

Kragen: Yes, that's right. She felt that way about people. Every once in a while she had friends who I thought were horrible

in many respects, but she'd always find some good in them [laughs], why she was spending time with them. I couldn't see it, because I'm not as tolerant as she was.

My kids are fine.

Hicke: Does Robin live nearby?

Kragen: She lives in Moraga, where she and Bob are both very active in school and civic affairs. Bob was on the school board for many years; he was president of the school board out there. He's been on eight years, I think, and he finally is now off; he just can't spend the time. You know, McCutchen has opened a Costa Mesa office. They opened it because one of Bob's clients, the ones who developed Hercules and Foster City, are doing the same thing down at San Clemente. Bob has been running back and forth, and they've acquired other clients down there. So he runs back and forth, meeting with the clients, and then trying to staff the office.

Hicke: Is he going to have to move down there?

Kragen: No, he's not going to move. He's been going down every week for one or two days. This week he decided not to go because he had a lot of things to do up here. They've got some multi-multi-million dollar deal up here that he's trying to close.

Hicke: He's keeping the airlines in business.

Kragen: Oh, he is. Between my son--who in the last two weeks was in Toronto; Athens, Georgia; Nashville; New York; Indianapolis--and my son-in-law--who is mostly down the coast here--they give the airlines a lot of business. But they're both quite successful.

My son's wife is very interested in horses. They have 750 acres out at Paso Robles where they breed show horses--you know, the ones that do dressage and things for the Olympics. They have a bunch of horses up there, and they are involved in breeding Dutch Warmbloods. Cathy gets up there quite often, but Ken doesn't. Cathy was an actress and did a lot of things, but she's become very interested in the horse business now.

Hicke: That sounds like a wonderful family.



Adrian Kragen's son and family: Ken, Emma, and Cathy Kragen. Christmas 1990.



Adrian Kragen's daughter and family: Kristin, Kevin, Robin, Katie, Bob, and Kim Merritt. Summer 1991.

Kragen: Oh, they are. My wife and I felt very lucky to have such wonderful children and grand-children and such a fine daughter-in-law and son-in-law. They're very thoughtful. My son has one of these car phones, and when he leaves the office nearly every night I get a call from him. So I talk to him at least three or four days a week. He called me from Toronto, and he called me from Athens. When he was in Europe this year he called me, and when he was in Japan he called me. He's a big telephone man!

The kids are very good and thoughtful. The two grandchildren who are at Cal are very good students and very active. My grandson, you don't know what he's going to do because he has so many talents. He's a wonderful artist; he's a good musician; he's a good politician--he's been president of the student body in high school; he was varsity goalie on the soccer team; he's a 4.4 or 4.5 student; and he's terrific in math and science. He is now goalie on the Cal Lacrosse team.

Hicke: Sounds like the latest edition of the Renaissance man.

Kragen: That's what the principal at the graduation said when he got the highest award they give at Campolinda. He said, "He's the closest thing I've come to a Renaissance man." He's fun. He calls me. I've had lunch with him a couple of times recently at the Faculty Club. I was worried because school's been so easy for him, but he talked about his courses. He understands his courses, what they're trying to do, and hopes they're going to come to certain results. So it's a nice thing.

Hicke: It's a lot of fun to have your family nearby.

Kragen: Yes, it's nice to have them where you can see them and talk to them, and see what they're doing--the grandchildren, especially. The whole family is very active--all the kids. My granddaughter who's here is on the women's varsity swim team; she's a long-distance swimmer. And she's going to be a lawyer, she says!

Hicke: Well, you and her father have set good examples for her.

Kragen: Yes, her father's a good lawyer. He went here, but I didn't have him as a student. He graduated not wanting to practice law. When he and my daughter got married and went into the Peace Corps in Peru, they were in a little Indian village in the Andes where no Caucasian had been before. Here was a lawyer, educated as a lawyer, teaching agriculture to the

Indians. And my daughter, who really had no experience, doing home economics [laughs].

Hicke: How long were they there?

Kragen: They were there nearly a year, but then she got quite ill-- one of these intestinal ailments. She couldn't stand the height and they had to send her down. They were over ten thousand feet. They sent her down, and then she had to come home. They went to Fullerton then, but they didn't like the south, so they came back here and he went to work for the Steinhart firm for quite a few years.

Hicke: Oh, the same one you were with.

Kragen: Yes. He was made a partner during the few years I was with them. Then he left them to go to McCutchen about five years ago, and went in as a partner. He was actually the first lateral person they took. It was interesting--there were forty-eight partners and he had to meet individually with all forty-eight.

Hicke: Before they hired him?

Kragen: Before they hired him.

Hicke: They must have been a little apprehensive.

Kragen: Well, they'd never done it before, you see; they'd never done a lateral hiring for a partnership before, and he was coming in as a partner. I had never heard of such a thing before.

Hicke: I know of several firms who have taken lateral transfers much earlier than that, although it didn't become as prevalent as it is now.

Kragen: He was the first McCutchen had had; at least that's what I was told.

Hicke: Did he have a hard time making his way?

Kragen: Yes, because a lot of firms were after him. He had talked to a lot of firms, and finally decided that McCutchen was the one. The problem was that Steinhart was having a lot of internal problems, and he was the managing partner. He said he was sick and tired of it, especially as firms were approaching him and asking him to come with them. He finally

decided why should he put up with this? He had tried to hold the firm together and do things, and he just got tired of it.

It was interesting because he finally decided that McCutchen was the best, as far as he was concerned, but then they went through a process.

Hicke: After he joined the firm, did he have a hard time finding a niche?

Kragen: No, no. You see, they really had a small real estate operation, and he went in to really build that; that's why they wanted him. He does a lot of Continuing Education of the Bar lectures, and he's written a couple of books, one on the Subdivision Map Act, which is for developers or something. I don't know anything about it. But he's done a lot of work. He taught here last semester, a course on partnership business law. They wanted him to teach again this year, but he said he just can't do it.

Hicke: Well, I'm glad we talked about your family.

Danish Government Grant for Tax Study, 1958

Hicke: Do you have more notes?

Kragen: Yes. Some things on sabbaticals are maybe interesting. I went on a sabbatical in, I think, '62; it was the time of the Cuban Missile Crisis.

Hicke: Can you tell me what the policy was for sabbaticals?

Kragen: The policy on sabbaticals here is that you're entitled to a one-semester, two-thirds sabbatical every third year; or a one-year, two-thirds sabbatical or a one-semester full-pay sabbatical every sixth year.

Hicke: The two-thirds refers to your pay?

Kragen: Yes. And you have to show that you're going to do something.

Hicke: You can't just take off and travel or something?

Kragen: Not just for pleasure. You can't say, "I'm not going to do anything to improve my knowledge or my position or what I'm doing; I'm just going to take a vacation." Technically, you can't do it. But I've seen a lot of sabbatical proposals, and--you know.

I took a semester sabbatical after six years, in '58. I had a grant from the Danish government at that time to do a study on Danish tax law.

Hicke: How did that happen?

Kragen: Why it happened was that we had had over here for a year a Danish tax professor, and we had become quite close and friendly. He wanted me to come over, and so he got what they called an Orsted Rask grant from a Danish foundation. It wasn't that much money. It was more the prestige rather than the money.

I went over and spent four months over there. Actually, I'd never been to Europe. We took my son and daughter, and my wife and we just toured for the summer. I worked--I checked and spent time in these various countries with these tax people--but mostly we were just seeing the countries. Then my daughter and wife went home because my daughter had to start back to high school. My son was to start at Harvard Business School, so he stayed on a week or so more with me and we went to Denmark. Then he went home and I was alone until November, I guess, when I finished up there.

Hicke: What did you actually do?

Kragen: Well, I talked mostly about the methods of administration and training.

Hicke: You lectured?

Kragen: I lectured. I lectured at Aarhus, at Copenhagen, at Oslo at the university, at Stockholm. I did a dozen lectures, I guess, in all, but mainly I was doing research on the administrative procedures and the training, to some extent--although I did later a more thorough comparative study of that.

Hicke: Training of--?

Kragen: Of tax officials. The Danes had had--I think it's completely gone now, but there was still some of it--a system of

appointing their tax officials based mainly on what they knew not of taxes, but of the taxpayer. In the small towns, especially. In Copenhagen it was a little different, but in the small towns you would appoint somebody who really had no tax experience, but he knew--because they filed returns and then you determined the tax--if somebody had bought a boat or something. He knew everything.

Hicke: He knew how much they had paid for something and what they were doing.

Kragen: Yes. That was the system. I was working with the top tax man for industry, and they thought it was a great idea. They thought it worked very well. I talked to some of the people in the various little towns around, and they thought the same. But by the time I was there it was completely gone in Copenhagen and even in Aarhus and all the larger towns. It was still there in some of the real small towns.

Hicke: What was your sense of how it worked?

Kragen: It seemed to work pretty well! There seemed to be no objections about it, and people seemed to get along. Their tax system is different from ours. It was very largely direct--I mean, excise and other taxes. They had an income tax system that, when you read it, could have taxed 100 percent--but never did, because of the way it worked, the exemptions. There could have been a circumstance where 100 percent could have been taxed, but that never happened, they assured me, because of the other provisions in the tax law.

Well, on a peculiar set of circumstances in the United States, when we had a 91 percent top rate, 87 percent overall, coupled with the state rate, if you had a juxtaposition so that you didn't get the deduction for the state rate in the particular year, you could have 100 percent tax rate. For example, it could have happened to a California resident because of our personal income tax rate.

Hicke: Did that ever happen?

Kragen: I had it once nearly happen. If we hadn't done some things for the taxpayer, when I was in practice at Loeb & Loeb, he would have been paying nearly 100 percent--very close to 100 percent. But, you know, when you have an 87 percent overall, and the state tax was 15 percent at that time, and you get a half credit, even so it's 95 percent.

Hicke: Wasn't the state tax deductible from the federal tax?

Kragen: Yes, but that only takes care of 87 percent of the tax. So you could get 90-some percent. But if you didn't get the deduction for the state tax--you see, your deduction was usually for the prior year's tax. If for some reason the way it worked was that you didn't get the deduction--there was no deduction for the prior year--and you had all the income in the one year and you paid the tax, you could have had 100 or 102 percent.

Hicke: Back to Denmark, after this older system went out, then did they have to increase their auditing procedures?

Kragen: Yes. They adopted a more formal procedure, such as we have in the United States.

Hicke: And there's no way to oversee--

Kragen: No, you had to have regular auditors and other staff. That was true, by the time I got there, in Copenhagen and Aarhus. Those were the two cities that I worked with mostly, other than a couple of very small cities that had the old system. They had a regular system, such as the U. S.--auditors, agents, and so forth.

Hicke: But I bet they didn't need that earlier.

Kragen: No, you didn't. Except I imagine Copenhagen always had some type of more formal operation.

Hicke: Did you make a report, then, to the--?

Kragen: Eventually I did an article on the system, which didn't appear in a U. S. publication. I did a report for the Orsted Rask Foundation. I gave them a report, which I looked for the other day. I don't know where my copy is. Oh, it wasn't that good; it wasn't that worthwhile. That one I didn't publish. The stuff on administration I ultimately, based on another study, did an article on, which was published in California or somewhere.

Hicke: Before we leave Denmark, what was it like working there?

Kragen: Oh, it was great. It was wonderful. The only problem was that they were too hospitable. I guess in 1958 I stayed in a hotel, but I was out every night because they had something planned. The same thing when I took trips to Copenhagen, to

Oslo, to Stockholm. Everywhere they were hospitable. In fact, in '62, when the same thing sort of happened, and when I was there again, all of a sudden I woke up in the morning and thought I had had a heart attack. I went to see a doctor that one of my lawyer friends there had recommended. He examined me, and when I got through he said to come to his office. I came into his office, and he said, "Professor Kragen, you have the Danish disease." I asked what that was, and he said, "Indigestion." [laughter]

Hicke: High living!

Kragen: That was it. I was at a party every night. I don't remember if it was in '58 or '62, but we were at a big dinner at a house. Then about eleven o'clock the hostess called us in, and there was this table set with all sorts of cold meats, bread, and beer and everything else--at eleven o'clock! It was like a cruise, you know. But you had to be polite and you ate. They were very hospitable. And it was fun.

When I came in to give a lecture to students, it was my first experience of this sort. I remember that I always came in with the professor whose class it was. The students all stood up, they all had coats and ties. Until we sat down, they stood up. It was a different atmosphere. I did the lectures in English because I don't speak Danish, and they all understood. I tried to speak a little slower than I normally do, but every place that I went on that trip--and on other trips where I've given lots of speeches and talks about various things--I spoke in English and they understood.

Hicke: Did you find their reactions different from students in the United States?

Kragen: Not intellectually. They questioned as much, and I thought they were quite good. And they were quite interested. They were more polite and in some respects a little more attentive, but the general discussion was pretty good usually.

Hicke: What did you say you were lecturing on?

Kragen: I was lecturing on American tax law, basically, one phase or another. It depended. Like I gave quite a few lectures at Aarhus in a course that talked about American tax law, given by this friend of mine. I lectured on various phases of it at his request, whatever he wanted me to do.

Hicke: Here I go again, but why were they giving a course on American tax laws?

Kragen: Because there was a lot of interest in it. You know, Denmark is the only other country in the world that I know of that celebrates the Fourth of July. In Aalberg there is a museum with a lot of U.S. stuff. It's in a forest area, a sort of wooded area. There's this log cabin museum, and every year they have a July Fourth celebration there.

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Kragen: It's to their interest. And don't forget that they were doing business with the United States, and they wanted to be able to represent U. S. people doing business in Denmark and in Scandinavia. That wasn't only true there; it was true in other countries that I went to.

I started off that trip in Brussels with the Comparative Law Congress. I gave a talk there, not on tax law; I gave a talk on trademarks and trade names, I think, which I was teaching here at the time. I gave a talk on the fair use doctrine, I think, but I'm not sure. Otherwise I didn't give any lectures on that trip in the rest of Europe, other than in Scandinavia. But subsequently I gave lectures all over, and a lot of my colleagues have done the same thing over the years. There's a lot of interest in American law of all sorts.

Hicke: I guess the more international business becomes--

Kragen: Sure, I think it's largely that. And, of course, some would like to come to the United States to study and they want to get some helpful information, that type of thing.

Comparative Study of Danish, Dutch, Italian, and U.S.
Training for Tax Administration, 1969

Hicke: You mentioned that you did another study on the training--

Kragen: I did a comparative study, and I think that was in '69. In '62 I did a different study, but in '69 I did a comparative study of the Danish, the Dutch, the Italian, and the U. S. tax training of their people for tax administration.

Hicke: Was that published?

Kragen: Yes, I think it was published in The Tax Magazine, maybe. Maybe it was published in the California Law Review. I can't remember.

Hicke: Did you come up with any astounding conclusions?

Kragen: No, the only conclusions I came up with were in relation to the effectiveness of the methods. I felt that the Dutch system was by far the best training system, but the way it worked it really was an elitist system. If you came through the tax departments and started working there, no matter how good you were you never could get above a certain level unless you'd gone through the Dutch training system.

The Dutch had a special school, which was first at Rotterdam, to train tax inspectors. It was a three- or four-year study. Then they decided they wanted more university flavor and a more rounded education, so they transferred it to Leiden. By the time I made the study it was at Leiden, although I went to Rotterdam and talked to the Rotterdam people also. They trained those people just to be tax inspectors. They were required to work for a certain time, and after a time they went out and were the private tax consultants. A few of them stayed, but most of them, after a period of years, left. They were very highly paid tax consultants, for that system.

Italy's system was, as most things in Italy--they'd set up a good system, a little different, where they appointed people and then sent them to school, which is sort of the system that we have in the United States. But they never really set up the school properly and the training was haphazard, which was true of most of the Italian activity. The administration was haphazard.

Hicke: How about the Danish system?

Kragen: The Danish system was a little bit like ours, but was not as intensive, by any means. It was a system based on background; you came into the revenue system at a position, and then they sent you to specialized schools for a year or for a summer, which is what we do. We do a lot of it in Michigan, and we do some all over the United States; we have specialized training for people who are in the system. We hire them, not from a specialized training unit, but we send them later to training sessions.

Application of Tax Treaties, 1962

Hicke: What about other sabbaticals?

Kragen: In '62 I took a sabbatical which was also centered in Scandinavia, but in which I spent time elsewhere doing a study of the application of tax treaties. I talked to government people, but I talked also to the controllers, or the equivalent who were handling problems for industry. For example, in Germany I talked to, among other people, Bayer Aspirin people, which was a big operation. I went to Austria and talked to the internal revenue and met with--not businesses, but with the chartered public accountants who handled the tax work for business. There were a number of those, and I got their views. I did the same thing throughout various other countries to see how the tax treaties were working, whether business considered them worthwhile, what use they made of them, and so forth. I wrote an article on that, and I can't remember where it appeared.

Hicke: If you could ever turn these up, it would be nice to collect them.

Kragen: Oh, they're around somewhere. You know, I was never one of those prolific writers. I wrote my share of articles, but that's about it.

Hicke: How would you get introductions to the people you wanted to talk to?

Kragen: Well, all sorts of ways. For example, at Bayer Aspirin I got it through Gerhard Kegel, the dean of the law faculty at Cologne, with which we had an exchange program. He went with me himself; the two of us went. (I went to the government offices in Bonn with one of his assistants.) In other places, such as in Denmark, I got it through people I'd met or through a professor. In Austria the consul general in Vienna did it for me.

I had written ahead. I had made arrangements with our international tax people, and they had also written.

Hicke: Through the American Bar Association?

Kragen: No, I didn't do anything through the ABA; I did it just through contacts with IRS people, and all sorts of contacts that we had with various--

Hicke: --university people.

Kragen: You know, the university people are much more influential in government--not with business, but through government incidentally influential with business--than our tax people. That is, in their consulting they do many more things in government; they're brought into government.

The Nancy incident is an indication of the sort of thing. I was in Nancy in '62, I think it was, for the hundredth anniversary of Dean Geny, who was the first dean of their law faculty. They had a big celebration, and I was representing the University at that celebration. I was in a meeting of some sort when all of a sudden they came in and said there was a call from the United States for me. I went and got it, and it was my cousin, who told me that my mother was quite ill and he thought I'd better come home, which I did. I was supposed to go around the world, but I canceled the rest of the trip.

When I came back, everybody thought it was President Kennedy calling me about the Cuban Missile Crisis, because they would have been called by their heads of state. And I didn't disabuse them of it! It was funny. They didn't think it was Kennedy, necessarily, but somebody in the government calling.

Hicke: Let me straighten out these dates. The first time you went to Denmark was--

Kragen: I went to Denmark in '58, and then I went to Denmark again in '62 when I was in the chancellor's office. In '66 the thing I was mainly interested in was the conference in Madrid of the International Fiscal Association. I don't remember what I did as far as a study that time. I think it was in '69 that I was based in Holland, and I did a lot of lectures there. That was when I finished the tax administration study.

Hicke: That was of four different countries?

Kragen: Yes. Then in '72, which was the last sabbatical I took and the last time I went to Europe, I was based in Holland. But that time I also went to Germany and Italy. I became very

ill and had to come home. I was supposed to be at Helsinki; I was going to give the annual university lecture. I had lectured at Amsterdam and in Rome. I had about twenty lectures to give, but I became ill after about five and had to come home. So I cut that short. We were gone about four months, I think, on that one. We left around the first of February and came home in May.

Hicke: That one wasn't indigestion?

Kragen: No, that was thrombophlebitis, which was serious and which made me dubious about European medicine.

Hicke: Did you have a bad experience?

Kragen: A very bad experience. Anyhow, that was it.

IX VARIOUS UNIVERSITY MATTERS

Class Attendance Requirement

Kragen: Another thing, which isn't about sabbaticals, which I think is interesting--I came out of practice directly to Boalt. There were things that I had learned in practice and they had become habits. So I tried to enforce them as far as students were concerned. In contrast to most of my colleagues--some of them have come around since, quite a few--I insisted on attendance. I took roll, which was unheard of. I insisted they be there on time, and I insisted they be prepared. If they weren't prepared today, I'd call on them the next class, until they finally got the message. There were a lot of other little tricks that I used to use. There were complaints about it, but it didn't matter to me whether they complained. I thought it was very important from practice to get into the habit of being where you should be, being there on time, and being prepared. Because I'd seen cases where I'd watched others get in trouble because they weren't [prepared].

During the student strike--not the first one, but a little later, when Heyns was the chancellor (I can't remember the year)--law students were picketing outside, and one of the students who wasn't picketing came in and said, "I was coming to your class" (and he mentioned the name of a particular individual who was a member of my class). "As I was coming in he put down his picket and came with me. I said, 'I thought you were picketing.' He said, 'No, I've got to get to Kragen's class.'" [laughter] It wasn't so much because they wanted the class; it was because of my rules!

Because I said that if you missed a certain number of classes I reserved the option to either request you to withdraw or to fail you in the course. And I enforced that. I remember the first year I was teaching here, the second semester, I think, I had a morning where I had four or five people in a row say they weren't prepared. I just closed my books and said, "Well, you better spend the rest of the hour getting prepared," and walked out. Nobody had ever done that to them. It happened in my day--Captain Kidd did it all the time! There was a big flurry, and I never had any problems with that class after that. They got the message.

There were objections. When we started evaluations, I'd get all sorts of things about how they liked to be treated as adults and so forth and so on. But they didn't act like adults! The funniest evaluation I ever had--there was one line that said, "Would you recommend this class to a friend?" This particular student put on it, "I wouldn't recommend this class to an enemy." [laughter] You know, the evaluations always went from adulation to recrimination; you had everything in them.

Hicke: Did you pay any attention to them?

Kragen: I paid attention to the things that I thought were good insights into the things I was doing wrong. For example, we had for years here at Boalt wonderful Christmas plays put on by the students. They were satires, and we had some real talent. They really characterized and satirized the professors wonderfully. One of the things that I did, in my first few years, when I had all these problems to propound to the students, I just spouted them out. Mr. Jones, "So-and-so-and-so."

This particular play was after Halbach and Hetland came; we'd hired a number of young men. The play involved a lot of other things, but part of it was Prosser, who was the dean, taking this allegedly new, young professor through to see how the classes were. Every class was a shambles until he got to my class, and the students were up and saluting and everything. This allegedly young professor said, "How does this happen?" The lights went out and then came on, and there was a student standing behind a big table with a lot of cabbage heads on it, and with a meat grinder. He had a cleaver, and they had recorded my voice, unknown to me, stating some problems. I said, "Mr. Moscovitz"--Myron Moscovitz was in my class--"Mr. Moscovitz, presume..." The

student would grab a cabbage head, cut it in pieces, and put it through the meat grinder as I spoke.

Well, I felt that was a very good comment on the situation, and I started printing the problems and handing them to the students before the class session. I gave them most of the problems ahead so they had a chance to look at them and prepare for them. When we authored a casebook, we put a lot of problems in the casebook. There are things like that which they did that I thought were good critical comments, and I used them. That was true of evaluations. If there were things that were said that I thought were legitimate, I'd try to adjust my teaching.

Beginning CEB, 1941

Kragen: Long before the Boalt period I did a lot of work with the Continuing Education of the Bar. You see, the tax committee, which I was on when I was with Loeb & Loeb, and was on for a while after I came back here--

Hicke: You mean the ABA tax committee?

Kragen: No, the California State Bar taxation committee. It was not a very large committee and we were quite active. We were the ones who started the Continuing Education of the Bar in California. There was a change in the tax laws in about '41, and we went throughout the state. We divided the state between the members of the committee, and we went and gave talks on the new tax law to lawyers from one end of the state to the other. I went as far south as El Centro. I took Fresno to El Centro. I did probably a little more than anybody else. I didn't do the big cities; I didn't do Los Angeles or San Francisco. I did smaller communities. But that was the start of the Continuing Education of the Bar program.

Hicke: Who else was involved in this with you?

Kragen: Valentine Brookes was one; Joe Kimball, who is dead now. Who else? I have a picture somewhere of that committee. Oh, Maynard Toll, who's also deceased. You know, this was a long time ago and most of them are gone. I think maybe Joe Sneed was on it, but I'm not sure. Sam Taylor was on it for a

while, as was Walter Nossaman. It was a very good committee, a very hard-working committee.

Hicke: How did you happen to decide to do this?

Kragen: We decided that there was a need for this new law to be explained. I can't remember who the state bar had to coordinate and set these things up, but they had somebody who could do it. Maybe they hired him; I think it was somebody they hired part time from the University. Later Harold Furth did it, and subsequently they had full-time people. Hal Furth, I think, was in economics at the time. But before him there was another man.

We decided that we ought to do it, and we agreed we'd do it. It was very successful, and the state bar decided it was something to pursue.

Hicke: Did you get paid for that sort of thing?

Kragen: I think we got travel expenses on that one. Subsequently they started paying, but only a small amount. It was very minor. It's like the seminar I created here in '53 on tax planning for the business enterprise. I had fourteen sessions, and I brought over at that time maybe seven or eight top tax lawyers from Los Angeles and San Francisco (and once in a while from Oakland) to submit problems. The class would work on them and then the professionals would come over and discuss the problems. I think I may have mentioned this.

Well, we never paid them anything; we didn't even pay them their expenses. It was a large chunk of time that they spent. And they still do. I gave that seminar last year and I had thirteen or fourteen tax practitioners come over, two from Los Angeles and the rest from San Francisco. They devoted a lot of time.

Hicke: What motivates lawyers to do that?

Kragen: Lawyers, I think, like to feel they're doing a service, number one. Lawyers generally like to feel they're teaching, and also they like to be associated with the University. When I started doing it, after the first year I decided that because we weren't paying them or anything, we needed something. So we made them visiting lecturers, which was no problem; that was easy. But then I obtained a lot of little special privileges for them, like the privilege to use the

Faculty Club, the privilege to buy athletic tickets as an equivalent to a faculty member. You know, little things. I also always wrote them a thank-you letter, but I also wrote a letter for the dean to send them, thanking them for their valuable service, which it was. You did little things that made them feel better. They didn't need the money.

When my son-in-law taught over here, I don't know what they paid him. It wasn't very much, I don't think, but it all went to the firm. That's the normal thing for lawyers, in the big firms especially. So they don't get anything out of it, and it costs the firms money. I have a fellow who's come up for the last three or four years to a seminar from Los Angeles, Al De Leo. Al's a topflight lawyer who I would say probably charges \$350 an hour or more. He spends a day coming up here, and he spends time preparing the problem, time reading the papers--if there were papers; sometimes there are and sometimes not. It's just a lot of time.

Hicke: That's pretty nice. But I suppose there's a certain amount of exposure involved that's also good, and they also meet--

Kragen: There are two things. There's exposure, and the students from a recruiting standpoint. I don't think that's the motivation for the lecturers, but it's a motivation that makes the firms willing to let them do it.

Vice Chancellor; John F. Kennedy at Charter Day, 1962##

Kragen: I made some notes on the period when I was vice chancellor. One thing that is so different now is the size of the office. In my day there was the chancellor, and he had an administrative assistant. Then there were people in the file department and a few stenographic people working for the chancellor. There were three vice chancellors. Strong and, in my day, Sherriffs, were both full time, did not teach. I was half time; I taught. I had a full-time secretary. Strong did the academics, and he had a part-time assistant from the English department, a man named Jordan, and a secretary. Sherriffs had a secretary. That was the staff. We had two or three people in the file department doing the records and files, and the chancellor had one secretary or two.

When you look at the size of that office now--

Hicke: How large is it now?

Kragen: All I can tell you is that my job was, as I've said, administration; academic and students, Strong and Sherriffs did. I did everything else. Now the person who does that, Burchland, the vice chancellor of administration--and there's a lot more things to do now, there's no question about it-- has an associate vice chancellor and I think five assistant vice chancellors. I know in the latest thing I've been involved with for the Emeriti, I've been shifted from person to person, and each time it's a new assistant vice chancellor.

Did I tell you about the Kennedy incident? About the brigadier general who was sent out here to set everything up for Kennedy? They sent somebody out here, and I can't remember his name, with a big staff. They were running telephone lines--

Hicke: Why did they send the brigadier general out?

Kragen: For the John Kennedy Charter Day appearance, when he appeared here to talk on the campus.

Hicke: Was he president at that time?

Kragen: Yes, president of the United States. Three weeks before they sent this staff of people out to do all sorts of things around the campus and to talk to us. This general who was in charge of this group treated us as if we were a bunch of hicks. Earl Bolton was the representative of the [University] president's office, and I was the representative of the chancellor's office to handle anything. And we were treated just like hicks.

Well, the day Kennedy came out we had a luncheon for him at University House. I was there and met him, but Bolton and I both had to rush out of there and get up to the stadium where the thing was being held because we were each manning a direct telephone connection to the White House that was right in front of where the President was speaking. We were sitting on chairs with a telephone right there, so that if anything occurred we could connect him immediately to the White House.

Hicke: You were waiting for a call from the White House?

Kragen: Either that, or if he wanted to call. So I rushed up, and the place was full; we had 93,000 people that day. The place was packed. I ran through the north end of the stadium, the tunnel there, and there was this general. He looked, and he said, "What a crowd! This is the largest crowd the President has spoken to." I just looked at him and said, "It's just normal for us," and walked on. [laughter] I felt I'd gotten back at him!

Rose Bowl in the Sixties

Kragen: Another item I was involved with was a sort of fun thing. We were looking for a new football coach. It must have been in the sixties. I went down to the Rose Bowl game to represent the University. We weren't playing, but we always sent a representative. Strong didn't want to go, so I went. The first thing about it, the night of the dinner that the Rose Bowl Committee gave, [Dwight D.] Eisenhower was the marshall of the event, the Rose Bowl Parade. They always had a big dinner for the marshall, and this was the first one I'd gone to.

We were at cocktails before dinner, and then somebody announced that dinner was ready and we could now go in. As we went in there was somebody pushing the women to one dining room and the men to another. My wife and I were just astounded. We never thought of any such thing. But that's what they did until they were forced to do otherwise.

Hicke: Why did they do that?

Kragen: Well, it was a men's--the committee was all men, I think.

During the dinner a waiter came up to me and said, "You've got a telephone call." I went out and took it, and it was our athletic general manager, who was Pete Newell at that time, and he said, "Adrian, I'm interviewing a potential football coach. I think it's crucial that you talk to him and this is the only chance. Can you get over here?" He was at the Hollywood Roosevelt Hotel. So I left the Eisenhower dinner and went to the Hollywood Roosevelt to interview the individual for football coach. [laughter]

The Tenney Committee

Kragen: There's another thing when I was vice chancellor that I don't remember whether I told you about. We had an equivalent of the House Un-American Activities Committee in California, the [Senator Jack B.] Tenney Committee. But at that time Tenney was gone and Senator [Hugh] Burns was running it. He had a goon who was really doing the work (I can't remember his name). Clark Kerr heard that there were going to be a lot of derogatory comments about the University in it, so he called me and asked me to go up and talk to Burns and see what I could do with him. Because I knew Burns quite well.

Well, I was concerned because the problem was involved in the fight between Jim Corley, who was the lobbyist for the University, and Kerr. Kerr felt that Corley was egging Burns on because of their enmity. I said, "Look, I'm not going to go up there and get caught in the middle on this thing. I have a bill that I've been working on for the Retailers that I could go up and do what I normally intended--that is, present the arguments of the Retailers to the senate committee. And then while I'm up there I can talk to Burns. So I have something other than the Burns Committee to go up there for." So Clark said fine.

I went up there for that purpose, and while I was there I talked to Burns and to his men, and we got most of the stuff out. But I went before the senate committee.

Previously two of us from a committee I chaired to recommend a football coach, Arleigh Williams and I, had met with Senator [Eugene] McAteer, who was a Cal graduate and a football player at Cal. McAteer insisted that a man that he favored should be the football coach. We tried to avoid answering McAteer and did everything we could to indicate that he was not a favorite, but as we were leaving he said, "Now, if you're not going to name him, let me know." And we never did; we didn't think it was appropriate.

He got mad at us, very mad. I got up there before the committee--this is after the new coach is appointed--and I'd been warned by Don Mulford that McAteer was after me, but I never thought he'd do this. I'd known McAteer and we were friends. But as soon as I got up to talk he said, "Professor Kragen, you're the vice chancellor of the University aren't you?" I said yes, I was one of the vice chancellors. He

said, "Why are you up here when you should be down doing the business of the University?" I explained to him what I did with my time and everything. He raised hell.

After I left--we got what we wanted, and I made my presentation to the committee; the chairman shut him up eventually--he called in the press. He gave an interview to the press and sent a letter to Clark about it. It caused quite a flurry for a while, but it died down. I thought that was interesting.

Hicke: Did you save those clippings?

Kragen: Maybe I did, but when I moved I threw so much stuff away. I think my wife saved them; in fact, I know she did. But I just threw it all out. I don't think I have any of that stuff.

I think I talked about after I got out of the chancellor's office and the '64 trouble started--about our speeches and the group.

Hicke: Yes, you told me about that.

Kragen: That's about all I had notes on.

Representing UC at West Point

Hicke: Well, let's go to my notes. I've got something down here about West Point. Did you go to West Point--?

Kragen: I don't remember what year, but that's the picture right over there [points] of me reviewing the troops. I went to West Point representing the University because Mike Heyman--this was fairly recent, comparatively--couldn't go. We were playing Army, and Mike asked me if I would go. I was retired from here, and I took a vacation trip and went to Florida and represented the University there when we played Florida. And I went to West Point, and then I went to Michigan. We played the three games.

I'd never been to West Point, and I was tremendously impressed by that place and by the way they handled it. They were very gracious to me and my wife. We first reviewed the

troops early in the morning, about nine-thirty or ten o'clock. After that was over we went to this reception, and General [James] Doolittle was there, and a lot of admirals and others. So it was very much fun.

One of the funny things was that they told me I should wear a hat. They wanted to give me an army hat, and I didn't want it; I didn't see any reason for an army hat. I had a golf hat, and it had a little golf insignia on it. My wife had a wooden bear pin--

Hicke: A California Bear?

Kragen: Yes, and she put that over the golf logo, and that's what I wore. We were with another couple on the trip, and also a lot of friends had come to the game, and they kidded the life out of me.

Hicke: Let's jump around a little bit here. Did I ask you about 1966, when the University shifted to the quarter system? Did that have any effect?

Kragen: It didn't have any effect on us because we didn't shift. We decided that a quarter system was not a good system for us. We were very lucky in a couple of things. First, Heyns was very friendly to the law school, and he was the one who had to make the decision as to whether or not we went to it. Secondly, Stanford law school, after thirty years on the quarter system, had just shifted back to the semester system. So that combination enabled us to keep the semester system and we never shifted.

The only thing that affected us was coordination. For example, a few of our faculty have taught undergraduate courses, and they got really fouled up because of the quarter system. Like Mike Heyman taught a course in architecture, and Justin Sweet taught a course in something. Steve Riesenfeld taught a course in political science. Those things were affected, but generally the law school as such was not affected.

Concurrent Degree Program

Hicke: I think you've alluded quite a few times to the concurrent degree program, both with other schools in the University and with other universities.

Kragen: We have a deal where Harvard sends us five students, I think it is, and we send Harvard five students for their third year. Our students pay their tuition to us and Harvard students pay their own tuition to Harvard; they get their degrees from Harvard or Boalt, as the case may be, but they have a year at the other school, which for some people has proven quite beneficial and interesting. I just taught this year a couple of the Harvard people who were here, and they were enjoying it very much. The only thing they were complaining about was paying the Harvard tuition, which is, of course, ten times nearly what ours is. [laughter] We've taught, but I don't think we have that with any other school.

Then we have the concurrent degree program with a number of places--the business school, the library school. I can't remember what else; I haven't kept up very much with it, but there are four or five. We had it with social welfare for a while. You go an extra year and take courses in both schools and get a degree from both schools; for example, in the joint program with the business school you get an M.B.A. and a J.D.

I haven't followed it, but in the M.B.A. program we had quite a few people. We've had at least one person I know who went through both programs and never practiced law. He's become a tremendously successful man in the computerized end of the securities field. He just sold his business for millions to PrudentialBache. He outlines for big pension funds and corporations and banks and everything what bonds and securities are best to hold for particular purposes. He advises them on that. It's been a very successful business. He's a Chinese fellow. I knew his entire family. My wife and I went to every wedding in the family.

Hicke: What is his name?

Kragen: There are two brothers, Clifford and Gifford Fong. Gifford is the originator of the business, and Clifford works in it. They still run the business but they're owned by Prudential Bache.

Those programs, I think, have been quite successful. Then we allow our students to take a minimal number of courses in other areas, even though they're not in a joint program. I can't remember the exact number of courses they can take in other places in the University. For a while I think it ran a little amuck; we allowed them to take courses I thought were not pertinent; they were just figuring an easy course and getting some easy units. But over the last number of years I think they've corrected that.

Hicke: They have to get that approved?

Clinical Program at Boalt

Kragen: It has to be approved, yes, by the associate dean. That has been fairly well monitored now. It's the same way with the clinical program. Early we weren't supervising it enough, I didn't think, and now I think we've got pretty good supervision of all the clinical programs.

Hicke: Were you much involved in that?

Kragen: Not as such, no. I was involved only as a member of the faculty. I had basic objections, not to the joint degree programs but to the clinical programs. I felt--and I still think--that most of those people would be better off concentrating on the law school. I thought that they could pick up what they got in the clinical programs in general after they got out, as my generation did.

Now, there are exceptions. There are cases where it's been proven very valuable. But overall I think it results in their not being able to take certain really advanced courses in the law school, because they're taking a semester off, really, for other purposes. I just never have been an enthusiast for the program, either at Hastings or here. It's much bigger at Hastings than it is here.

Hicke: So it's a substitution for a semester and not an addition?

Kragen: We're doing a little more of requiring them when they're in the clinical program generally, in certain areas of it, to also take a seminar here. So we do have a little more contact. For example, an extern for a judge--it's a fine

experience, but I am not convinced that it is better than what they could get in law school. But, of course, kids get bored in law school, and they get tired of it, and this is a great relief from law school. That's partly our problem. Partly we don't make those third year courses fun enough-- fun in the sense of enjoyable and interesting. That's really our problem.

That coupled with the great proliferation of courses, I think, has done things that are not in the best interests of the students.

Public v. Private Law Schools

Hicke: One of the things I wanted to ask you to talk a little bit about is public versus private law schools. You've taught at both.

Kragen: No, I haven't. Hastings is a public law school; it's part of the University, in a sense. And I taught at Texas, which is a public institution. I've had some experiences with private institutions, but I've never taught at any.

Hicke: Are there differences in pressures from the public versus private schools?

Kragen: Well, yes. For example, we were letting in here quite a substantial number of out-of-state people.

Hicke: I wanted to ask you about that. I just saw an article about that in the Recorder. These are quotas for out-of-state residents; the quota is 25 percent and they've been having 35 percent.

Kragen: Have we? I didn't know we had. I don't know what the percentage was when Halbach was dean, but somebody whose child was denied admission said, "Oh, we're paying the taxes and they're letting in all these out-of-staters." So the legislature--Willie Brown and some others--threatened to cut our budget. I mean, to "line item," in effect, in the budget for the law school. Halbach and the chancellor (I can't remember who it was) and the president all sat down with--

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Kragen: --legislators and made this formal agreement to limit the enrollment of out-of-staters. And I thought we were doing it. As Edward Tom (our administrative officer) says, he's looking to get 25 percent. Because it gives us a better mix.

The problem, however, is that we get a lot of out-of-state school people who are California residents. We get people from Princeton and Harvard and so forth who went there from California. Some of the best students--you know, when a student who is from Harvard or Yale or Chicago or something, and is number one in his class, applies here, we don't want to be forced to say no. People in the top five percent in the top schools in the country, we want to get them. Well, this "rule" restricts it to some extent.

Halbach hasn't been dean for quite a long time, but that was an agreement that was made. Theoretically, I guess, it's been kept. I know it's been watched.

Hicke: You just mentioned another pressure--or the same pressure, actually--which is that somebody from the state legislature can come along and say, "Well, we'll cut your budget if you don't do this and that."

Kragen: They haven't usually gotten that detailed with the law school, but every once in a while--. In the first place, I think Willie Brown, who is a Hastings graduate, was sort of pushing us to the benefit of Hastings, that sort of thing; he wanted to get more for Hastings. I don't know, but Willie is pretty good in maneuvering those things. But normally we have not had problems.

We had problems during the bombing of Cambodia. We had problems with the legislature which came up in another way. Because one of our faculty members who was an ultra-conservative didn't like what was happening around the law school. We were riding it out, in a sense; we were trying to accommodate to things but not giving in to anybody. But there were a few people who didn't hold their classes and there were other things. Around here we've always adopted the policy that if we have troubles we try to iron them out internally; we don't go outside.

Well, he sat down and wrote a detailed letter to the governor and a lot of legislators. Reagan was the governor

then. It caused us a lot of trouble for a short while with some very conservative legislators.

Every once in a while something comes up and the president or someone asks one or more of the law school deans to go up to Sacramento, but mostly law schools haven't become the target.

Hicke: I have read also that there's a certain amount of feeling in the University for a law school that's connected with the University to have a somewhat broader curriculum that involves more historical and philosophical perspectives than would be true at a private school.

Kragen: I imagine some of the departments feel that way. We have some of that now with the JSP program--Jurisprudence and Social Policy. They have philosophers, they have economists, they have sociologists, criminologists on their faculty. They teach with us in law school courses to some extent, and then they have their own courses and they also teach a lot of undergraduate courses. But it's a Ph.D. program. That's taken care of a little bit of that criticism.

I think when the law school started it was really a part of the political science department. It accommodated to all the things that were generally in the academic scheme. But since it became a school of law I think we've gone more and more away from this; we give courses on history; we've given courses on great books and the law; we give courses that relate to the philosophy of the law. We've had courses that do that, but not enough for some of the people in other departments. They think we ought to let what they consider "trade school" courses be done by Hastings and the other schools and not by us. But you can't do that. We need to turn out good lawyers.

We've done some other things, but mostly we've done courses that we thought fitted people to practice law. Although we haven't had, as Hastings had and still does to some extent, and as McGeorge [School of Law] and others do, the direct preparation for the bar type of situation. Most of our courses have an intellectual content much more than a practical one. And that's one of the objections by some people on the other side, that we don't have enough practical education. But we do quite a bit of it now; we do a lot more than we did.

Hicke: Yes, you did quite a bit of that, I think.

Kragen: Oh, yes.

Arbitration Matters

Hicke: I wanted to ask you about a couple of other people. I saw something where you were a member of a committee that appointed John Austin as an arbitrator for some--

Kragen: No, John Austin and I and Frank Farella were the arbitrators on a matter involving Breuners [John Breuner Company] and Wells Fargo Bank. The bank nominated or appointed John.

Hicke: Oh, Breuner Company appointed you.

Kragen: Yes.

Hicke: The bank must have appointed Frank Farella, because then the two of you selected John Austin.

Kragen: I guess that was it. After two or three days of hearings the three of us got together and talked one afternoon after the hearings were over. We agreed that we'd go back to our people and suggest they sit down and settle it, which they did.

I was on another arbitration in Los Angeles involving a question of a law firm dissolution involving some very acrimonious discussions. One man had started the law firm and now wanted to leave it, and the question was on keeping of clients and on division of accounts and that sort of thing.

Hicke: Do you want to say which law firm?

Kragen: Yes, it was then [Lawrence] Beilenson--I can't remember, but Beilenson was the man who started it. It now is Rosenfeld, Meyer & Sussman in Los Angeles. That firm--Rosenfeld, Meyer & Sussman--asked me to serve, and I can't remember who the other arbitrators were. One I didn't know at all who I remember was the American Arbitration Commission appointment, and then there was another, third one.

In any event, I would fly down there and we'd have two or three days of hearings, and then I'd fly back. We'd had about three sessions--and it was going to go on for a long time, it was obvious, because there were so many details--and I got a call from Don Rosenfeld, who'd been my partner in Loeb & Loeb. In fact, I had selected him as my assistant when he got out of Yale Law School, and then he became a partner. After I left, he left Loeb & Loeb and went to this other firm.

I got a call, and he said, "Adrian, we're going to drop the arbitration." I asked why, because I thought the evidence was favorable to them, as far as that went. He said, "Well, our main client is MCA"--which owned Universal and a lot of other things. [Lew R.] Wasserman was the head of MCA, and still is the head of MCA--well, Jules Stein was originally; he was the chairman, and I guess Wasserman was the president. Wasserman told him, "I don't want my lawyers fighting over this thing; I want you to settle it." So he said, "We're settling it."

So that was the end of that arbitration. I've been on two arbitrations other than University arbitrations--I've been on quite a few grievances for the University in which I've made decisions--and on those two we never came to a decision. [laughs]

Hicke: Did you know John Austin?

Kragen: Oh, yes, I'd known John. John's a fine lawyer and a fine man. Yes, I've known John for many, many years. He was very close to Dick Jennings on this faculty. I may have met him otherwise, but I think I'd met him first through Dick. We'd gone to a number of things, and there were a lot of social functions where John and Betty were involved. I like John very much. He's a top-flight lawyer, and a top-flight gentleman, which you don't always find.

Emilio G. Segré

Hicke: Then I wanted to ask you to tell me a little bit about Emilio G. Segré. He was another colleague, only in another department.

Kragen: Yes, in physics. He died this year. As a matter of fact, I was named as the executor of his estate. He also had a codicil which allowed me to resign in favor of his widow,

which I thought was a good idea, and I did. But I talk to her frequently about what's happening and watch it a little bit.

Emilio, you know, was a son of a paper manufacturer in Italy. There were three brothers. One became a professor in the East, in a college in the United States, and the other one stayed with the paper business in Italy. But Emilio had started working, when he was getting his degree, with Enrico Fermi. Emilio came to the United States first, I think, on a visit, and then permanently, and he came to the University of California.

Hicke: About when was that?

Kragen: I can't tell you. He became quite friendly with Albert Ehrenzweig, who was on our faculty and who was an Austrian refugee. I think part of it was because Emilio was then married to his first wife, Elfriede, who was an Austrian; I think that was the connection.

Emilio had a tax problem that came up, which involved Italy and the United States and was a very intricate, very difficult tax problem. He talked to Ehrenzweig, and Ehrenzweig asked me to meet him and talk to him and see what we could do. So I started representing him on that and a number of other tax problems he'd had over the years, and we became very close friends. We saw each other socially sometimes, and around here quite a lot.

So I did a lot of things for him of various sorts over the years. After a time we started investing together. Over the years we were in half a dozen or more ventures together--real property ventures. We talked a lot. He was always interested in doing something, and his second wife, Rosa, was very interested.

His first wife died while on a walking tour with him in Austria; just dropped dead. She was a lovely woman. Later he married this quite-a-bit-younger woman who's been very good, very devoted to him. She is feisty on anything involving Emilio [laughs], somewhat like Madeleine Traynor. It's an admirable trait, but it sometimes makes for problems.

I admired Emilio a lot. He was a terrific physicist. He had a theory, which most of my other scientific friends

OBITUARIES

Nobel Prize Winning UC Berkeley Physicist Emilio G. Segré

University of California physicist Emilio G. Segré, who earned the Nobel Prize in 1959 as co-discoverer of the antiproton, died Saturday of a heart attack while walking near his home in Lafayette.

Mr. Segré, 84, had served as a faculty member at the University of California at Berkeley for nearly five decades and as a scientist at the university's Lawrence Berkeley Laboratory.

His work at Los Alamos during World War II led to his co-discovery of plutonium-239, and to other findings that led to the development of the plutonium bomb. Later, however, he became a strong supporter of world peace and nuclear arms reduction.

In a statement issued yesterday, UC Berkeley Chancellor Ira Heyman praised Mr. Segré as "a scientist of great integrity, dedication and conscience."

"His discoveries will forever rank among the great contributions in physics, and his life will be a model for the best in science," Heyman said.

Mr. Segré and Owen Chamberlain, also a professor of physics at Berkeley, were awarded the 1959 Nobel Prize for using the university's powerful Bevatron to discover the antiproton, thereby confirming the existence of antimatter. The pair shared the prize with two fellow scientists.

The Bevatron, with 6.2 billion electron volts of energy, allowed the scientists to hunt for the antiproton, which had earlier been predicted in physics theory. Twenty years before, Mr. Segré had gained attention for discovering technetium (element 43), the first artificially produced metallic chemical element, and astatine (element 85), an unstable chemical element formed when bismuth is bombarded by positively charged alpha particles.

He was also the first to observe the Zeeman effect in so-called "forbidden spectra" and was a pioneer in the chemical separation of nuclear isomers. Isomers are chemical compounds having the same elements in the same proportion by weight but differing in their molecular structure.

The Zeeman effect, which was named after a Dutch physicist, is the effect produced on the spectrum lines of light emitted or absorbed by atoms subjected to a strong magnetic field.

Mr. Segré was born in Tivoli, Italy, on Feb. 1, 1905. He earned his doctorate in physics under the sponsorship of Enrico Fermi at the University of Rome.

In 1938, he and his first wife, Elfriede Spiro, fled the Mussolini regime to the United States, where he accepted a temporary position at Berkeley.

Although officially listed as an "enemy alien", when the United States entered World War II, Mr. Segré became a leader at the Los Alamos lab. He became a U.S. citizen in 1944 and accepted a professorship at Berkeley two years later. He retired to emeritus status in 1972 but remained active in research, writing and lecturing until his death.

Mr. Segré was appointed professor of physics at the University of Rome in 1974. He was decorated with the Great Cross of Merit of the Republic of Italy and was a member of the U.S. National Academy of Sciences. After the death of his first wife, Mr. Segré married Rosa Mines. His other survivors include a son, Claudio, of Austin, Texas; daughters Amelia Terkel of Tel Aviv, Israel, and Fausta Walsby of Bristol, England; and five grandchildren.

Plans for a memorial service are pending. The family suggests gifts in his memory to Save the Redwoods League, San Francisco.

dispute, that no physicist over fifty ever did anything worthwhile. And that included himself. [laughs] But he did a lot; he wrote a lot of books and he taught.

He was a "professor at large" in Italy. He could go over there whenever he wanted and teach at any one of the major Italian schools. Then after a period they gave him a pension, which still continues, I understand, because Rosa said that in order to get it she had to go to Italy and file some papers there--one of these days; she hasn't done it.

He was a fine scientist and a fine person. I enjoyed him, and we enjoyed being with him. And we met a lot of interesting people at his house from time to time. I very seldom understood what they were talking about.

Hicke: I know the feeling, having two kids in biochemistry.

Kragen: But they were interesting people. I never met Fermi, who was dead before, but I met Mrs. [Laura] Fermi there. I met Dr. [Chien-Shiung] Wu, who is this top Chinese scientist. She was a student here and is one of the top physicists in China and in the world. She came over here and gave a series of lectures two years ago; that's where I met her.

I enjoyed my friendship with him, and he was a good client as well.



X ALUMNI AND ATHLETICS

The Lair of the Bear

Hicke: Maybe you can tell me a little bit about the Lair of the Bear.

Kragen: That was the best thing the Alumni Association ever did. The Lair of the Bear was started first, I think, under Stan McCaffrey. He was the executive director, and it was probably Mike Koll's idea. They started it first--and it did not go--at Shasta. It was not successful partly, I understand, because of the accommodations and partly because of the mosquitoes and other things that made life tough. And I know, because I worked in that general area as a water boy for PG&E's Pit River #1 when I was twelve years old. The mosquitoes were deadly up there.

Hicke: This is a summer camp?

Kragen: It's a summer camp. It starts usually around the middle of June and lasts until September. One of the problems with it now is the period it lasts. They've just had a reunion of the Lair of the Bear staff over the years; it's the fortieth year. They had over five hundred people up there. My daughter and my son both worked there.

Hicke: Now it's up in--

Kragen: It moved in '49. They acquired what had previously been Camp McCoy, a Boy Scout camp about nineteen miles east of Sonora. They had tent cabins and things there. I'm not sure how much they had to buy new and put in, but there was a lodge there

and a swimming pool and other things. They started in '49, and we went up that first year with my two children. We were living in Los Angeles then. We went up for one week. It was so cold at night that the two other couples that we went with never went again. But it was a wonderful camp for children and families. We met people up there who have been my closest friends since.

We stayed a week, and when we left both my children were crying; they didn't want to leave. So from then on, until we quit going, we went up there for two weeks. Then, in 1952 we were up there. I guess it was in the Korean war; it was the year we moved up here.

My son was fifteen, and he was very big; he was six-foot three then. He always worked helping the maintenance people and everything, and they drafted one of the staff. Mike Koll asked if Ken couldn't stay and work, so he worked there every summer but one while he finished high school and while he was at Cal.

Then my daughter started working there as soon she started at Cal. She started at Davis; they took people from Davis then. Last year, twenty-two years later, her daughter had the same job at the Lair that she had had.

I was just talking to my grandson at lunch. He worked as an intern this summer at ILM, which is [film maker George] Lucas's special effects outfit over in San Rafael. He loved it and he said he wanted to do it on the day when he didn't have classes here, but he had no transportation. We were talking about it, and I said he could work there next summer. He said, "No, I'm going to work at the Lair next summer!" [laughs]

In about 1952 or '53 I was on the camp committee. We came up to the Lair--Bob Tuck, Stan McCaffrey, and me. We had been looking all over the state for another camp, because the requests for reservations from Cal alumni were tremendous. We got up to the Lair, and Mike Koll said, "Look, I think we've got a place where possibly we could put another camp." It was right next to where the first, present camp was--Camp Gold they called the original site. We went over and saw the location and we agreed. So the alumni association built a new camp with a lodge and swimming pool and tennis courts and everything there, and it's Camp Blue

now. They hold about 275 persons in each camp, and they run for twelve or thirteen weeks a year.

The problem they have now is that when Cal Berkeley starts early they have to get a staff in to finish the last few weeks. They do various things; I'm not sure exactly what. It's been a tremendously successful thing and has really caused families and people to be closer to the University. They do all sorts of things.

We used to put on skits; I don't know whether they still do that up there. One of our group was Harriet Blue, who was a wonderful parodist, I guess you'd call it. She did one thing which was her biggest success, I guess. She took the "My Fair Lady" songs and made them into the basis of a skit, "My Lair Lady." I found in my collection a copy of the songs the other day because they wanted them for this reunion. We also had a group called the Honeypot Singers. The last day of each week you were up there this group--my wife, Janor Tuck, Harriet Blue, and others--would get up and sing these songs, which were efforts to get the campers to be more generous in tipping the staff. We thought the campers weren't being very generous, and the salary paid the staff was quite low.

Then there were various skits put on. There was always a baseball game between the staff and the campers, and the staff practically always won. Now they have the baseball game between the two camps. But I remember about five or six years ago my daughter and her husband and their children were up there. We stayed with friends in their cabin at Miwuk, and went over the day of the baseball game, which is a Friday, and then stayed for dinner. Everything is en masse, you know: everybody eats together; the facilities other than the tents are all group facilities. On the way back to Miwuk after dinner, I turned to my wife and said, "How did we ever stand all that dirt and noise?" But we did and loved it.

And it's the same with my kids. My daughter had a little problem getting her husband to go, because he'd never been there while he was in college and law school. He felt it was an in-group, and actually those who are on the staff are very much an in-group. Finally, after a few years she persuaded him to go up, and he's the most enthusiastic one. He wouldn't miss it at all! I think that's true of families.

In 1952 I started a sort of year-round Lair group. We wanted to give a party, my wife and I, for the group who went to the Lair with us. Even when we were living in Los Angeles, we'd get the notices for the Lair and the women would all call around to see when we were going to get a date in agreement and send in our reservations. That group was about twenty of us--twenty adults--and we wanted to have a party. I got the idea to call the group The Lair Conditioning Society. The first invitation that went out started, "Are you ready for the Lair?" I looked at it the other day--I still have all the notices of the parties we had: "You know your condition? Come...", and a lot more nonsense.

From then on, everything was The Lair Conditioning Society. There was another group that went up, Bill Milliken's group (he was president of the Cal Alumni Association two or four years ago), which was called The Martini Athletic Club. We were sort of competitors, you know. It was great. There were a lot of things like that which happened.

There were wonderful things for the children. There was one incident that I remember so well because I think it made a tremendous impression on all the children. A woman named Betty Mollendyke, who was born without arms, was up there. She played bridge, she went to cocktail parties, she disciplined her children, she ate her meals--all with her feet. I know it made a tremendous impression on my kids, that despite her handicap she could do things. There were a lot of other things, but this is just an example. There were a lot of things that happened up there that I think molded, to some extent, our children.

My closest friends, Janor and Bob Tuck, we met up there the first year. They were a big family. When we first met them there were seven children, then they finally had eight. Bob got killed in a tragic accident this year, but Janor has eight married children and twenty-six grandchildren.

We met a lot of people up there that we became very close to, who became, really, some of our closest friends. And we did a lot of things together; we had parties all the time. At Big Game we always had parties. The Tucks live in Hillsborough and they always had a big party there after the Big Game. We had parties up here. We did so many things. And that's been true of lots of people.

I know I see people all the time, some of whom I had as students, that I first met as children at the Lair. Myron Sugarman, who's at Cooley, Crowley, and who is very active in Cal functions, went up there with his family. There were a whole lot of them.

It's been a great thing for the University. It's much more expensive now, but it's still a comparatively inexpensive vacation. A lot of families that couldn't afford a week's vacation at any normal resort can afford it there. And it's been a moneymaker, to some extent, for the Association--not a lot, but they made money.

Hicke: At least they're not losing any.

Kragen: Oh, no, they're not losing any money on it. And the people are very close. When you consider they got over five hundred people for that staff reunion--and it rained part of the time. I asked my daughter, who went up--and my granddaughter, who went also--how it was with the rain and all. They said, "Oh, it was wonderful; we had a great time. It didn't rain that much."

Alumni Week at the Wawona##

Hicke: I also wanted to ask you about the Alumni Week at Wawona.

Kragen: Okay. Another thing about the Lair, and it's true of Wawona, too, is that they always had a University speaker at each camp. Or maybe they spoke at both camps; I think maybe one person went up and spoke at both camps. Seaborg went up and talked to us about atomic energy. They had admissions people from the University who talked about the admissions process. Each week there was a guest. Halbach and [Richard M.] Buxbaum from this law school, and others from the law school have been speakers. I think that helped to get you closer to the University, and also it was very interesting information. I think that was a big plus. Also it made some of the faculty who weren't necessarily graduates of here closer to the alumni, too. That helped, too.

Hicke: So it was for both faculty and alumni.

Kragen: Oh, a lot of faculty go up there now and went up there then, and not as speaking guests. I was a faculty member. I went up once as a speaking guest, but the rest of the time I went up as just one of the campers.

Wawona was started in 1932, I think, by [Robert] Sibley, who was then head of the Alumni Association. He was a good friend of the head of the Yosemite Park & Curry Company, Tressider, who became president of Stanford for a while. The story I heard, and I think it's true, is that one day Sibley was talking to Tressider, and he said, "You know, you open Wawona"--in those days Wawona opened about the second or third week in June; it wasn't equipped for winter. Now they're open most of the year--"and I know, having been up there, that that first week your people have trouble getting their staff used to doing everything. Why don't I do this: get a group of alumni who will come up there, and we'll pay a reasonable fee"--there's a golf course there, you know, right at Wawona--"and we'll break in your staff. We won't complain about things and so forth."

So that's how it started. The first time I went up was about 1956. Pete Newell was going to be the speaker. He was basketball coach then. He and I were close friends, and he said why didn't I go up. We'd never even heard of it before. So the Tucks and ourselves made reservations and went up, and we loved it. It's not luxury, but it's much more luxurious than the Lair because it's a hotel there. The rooms are old, but they're all right, and there are beds instead of cots that we had at the Lair for a long time. And the golf course is a nice thing right there.

A group of alumni went there for a week. In those days a third or better of the group came from Los Angeles, people we knew, largely, or people we got to know if we didn't know them previously. It was a good coalescing of groups. It was very reasonable in those days; it's now quite expensive. The food was excellent, and we had a lot of bridge, a lot of golf, a lot of conversation. At least one or two University people came up and talked. We got to know a lot of people--older alumni than the general Lair camper.

In the first few years I don't think there were any children, and then a family from Los Angeles, James and Mary Cline, who had nine kids, came up. There are now a few children, but not very many; it's mostly adults, 98 percent adults, I would say. There's a lot of talk about the

University. Always Stan McCaffrey and then Dick Erickson, and then Colette Seiple came up. Dick and Stan came up for the whole week, I think, but the rest haven't always come up for that. And we had somebody from the alumni, like Vi Burchard, who until she died was there representing the alumni, and she handled everything.

The management was very friendly and nice. There was a period--until this year, I understand; I wasn't there--after MCA took it over when they were much less friendly. It seemed to me they wanted to get rid of the alumni group, but now, from what they tell me, the last time they had a real good relationship with the management. You have all the sorts of things that make for a good vacation; that's what it was. And it also got a lot of people who weren't close to the University at all to be close to the University. Because some of us who were close were up there, and there were University people lecturing, and the alumni people participating. I think we were like the Lair on a very much smaller scale. That started long before the Lair--around '32, I think.

It changed as Wawona and Yosemite changed, so that sometimes they wouldn't necessarily give us the first week. In fact, two years ago I think it was just before the July 4 period, and that was fairly late for that sort of thing. It's been there a long time, and I guess it's going to continue. I thought this might be the last year, but they had a good relationship this year, they said, and they feel it's going to continue.

We enjoyed it, my wife and I. We decided four or five years before she died that there were other things we wanted to do, so we didn't go for those years. But we had great times when we were up there. We enjoyed it, I think, a little more because there were a lot of the Los Angeles people we knew from when we lived there. So it was fun to be with them. Then they quit coming--and now I think there are no Los Angeles people or Southern California people there; it was a long distance, and the people got older and more tired.

A few of them who were from L. A. have moved up here since they retired, like a fellow named Bill Holabird, who's the president of my class and was president of the Rossmoor Alumni Club. He and his wife were both classmates of mine. They used to come up, but they live up here now and go up

from here. And now we've started another thing, which I still go to, which is called the Wawona Warmup. You see, in the golf tournaments there is a Bell cup, which is a big bell, and a Campanile cup. Those are the two main ones, and then there are some other awards for bridge and for other things that are permanent awards.

There's a woman who is the winner of the Bell in the women's competition, and a man. Each one keeps the original big bell for one half year, and a replica you have for yourself. The idea of the Wawona Warmup was to exchange the trophies. We'd go down each year in January or February someplace halfway between Los Angeles and Berkeley. It's not quite that way now, because the Los Angeles people aren't really coming, so we don't go half way. For the last four years we've gone to a place at Hollister called Northridge. They have a golf course and an inn. It's three days-- Thursday, Friday, Saturday. Some of us usually go a day ahead--the Tucks and ourselves have gone a day ahead. It's just nice to play golf and bridge and talk.

Digression: Billable Hours at Loeb & Loeb: Branch Offices: Ethics

[Interview 7: 2 October 1989]##

- Hicke: We're talking about the newspaper article this morning that says lawyers are not happy with their profession. You were telling me about Loeb & Loeb.
- Kragen: When I was managing partner at Loeb & Loeb, we figured that if we got from the young associates 1,000 billable hours we were doing all right. We wanted to get at least 1,000, and we usually got more. A man like Selvin, for example, one of our partners--or my time; I would record close to 1,700 or 1,800 billable hours a year, or maybe better. Selvin would probably record 2,500. But there was no pressure. I mean, nobody ever said to me, in the eleven months when I was not a partner, "You're not getting enough billable hours," or "We'd like to get so many hours." And when I became a partner I never heard the number of billable hours really discussed to any extent.

We discussed record-keeping for billable hours. That is, we had what I thought were some silly rules, one of which was that if you got a phone call from a client, no matter how short it was it was fifteen minutes on your billable hours charge. Even if you just said hello! Well, you didn't follow it. And we had partners who didn't keep records worth a damn at any time. We always tried to get them to keep records.

I bet our average associate did no more than 1,100 or 1,200 billable hours a year, and our average partner did probably 1,200 or 1,400 billable hours. Today they're talking about 1,800, 2,000, 2,200. New York firms I hear are worse.

Hicke: One lawyer in a large law firm was telling me he thought law firm attorneys were going to start retiring early because of this enormous pressure.

Kragen: Well, I would think so. I would think it is probably true. If you look at the end of the year and your partner or associate says, "Gee, your billable hours weren't enough," and you've worked as hard as you thought you could, you'd start thinking about whether it was worthwhile.

I worked long hours. We never kept a lot of records on my time. For example, when I was working for the motion picture industry on a weekly retainer we never kept a record, really, of the time because it didn't matter. When I was in Sacramento I'd get up early and work during the day, and then we'd have committee meetings until ten or eleven o'clock at night.

Hicke: I'd say you did your fair share or more.

Kragen: Well, they were getting enough money! I don't remember how much they were getting for my weekly compensation, but it was enough.

Hicke: Yes, that was quite a contrast.

Kragen: I don't think the Loeb office, however, was typical. The Loeb office was regarded by other lawyers as sort of a country club office. Edwin Loeb had a bar in his office; a client had presented him with a beautiful bar. At five o'clock any night you could go in and mix yourself a drink, or meet other people who were in there. I didn't very much;

I wasn't there very much. But unless there was a conference or something in Edwin's office, anybody from the office was welcome.

Most of the people left by five or before. With some exceptions it wasn't a terribly hard-working office, and it showed to some extent. I don't think that our partners' gross earnings were comparable to some of the other offices, but nobody seemed to care. I know, for example, that when Selvin left the office long after I'd come up here, he doubled his income.

Hicke: Did this attitude extend from the two--?

Kragen: From the Loeb's. Actually, from Edwin Loeb. Joe Loeb was a conservative, very careful, meticulous lawyer. Edwin was a dealer. He used to say he was "the Loeb with three wives and one mistress." [laughs] He was a great business dealer; he made great deals. Before my time, Edwin Loeb at one time had a special retainer of \$100,000 a year, which was a lot of money in those days, from the motion picture industry. And that was in addition to the firm's retainer from each of the studios. He had a personal retainer of \$100,000--which he spent quickly, I think.

Hicke: Have you got some notes?

Kragen: I don't know if we talked about one thing that I think is interesting--on branch offices.

Hicke: Loeb & Loeb?

Kragen: Well, yes, but the whole theory.

Hicke: Let's talk about it.

Kragen: Those of us who were not doing litigation but mainly motion picture studio work had a lot of work out in Beverly Hills, out in Culver City and Burbank, and a lot of the executives lived in Beverly Hills. We had an idea of opening a branch office in Beverly Hills. As a matter of fact, a few of us went so far as to get an option on a vacant lot in Beverly Hills and get a friend who was an architect to draw us a sort of a plan for a four-story building. We would use two stories and rent out the others.

We went to Edwin and Joe, and we got turned down immediately. "We don't have branch offices. You can't watch people that are in branch offices. You have to have the responsibility of having people right where you can see what they are doing and you know what's happening." In addition, we had a lot of business in San Francisco, and we used the Steinhart office for it. It was obvious, from our standpoint, that we could afford a San Francisco office. No, no possibility.

We had a client who owned the Bankers Building in downtown Los Angeles, and he wanted to sell it. We thought the price he was asking was a good price, and a few of us partners in the office talked to him. He said he wasn't interested in getting a lot of money now, if we wanted to buy it with \$100,000 down and buy the building on long-term installment payments. So we went to the Loeb's with that. "We're not landlords; we're lawyers." [laughs]

I think the branch office thing and owning your own office were typical; I mean, it wasn't just the Loeb's. All of a sudden it changed, and it changed with the Loeb's. They opened an office in Beverly Hills, and I think they have one in Century City. I don't know where all they are now. But it was not normally the thing to do.

Even in '52 when I came up here, very few offices had branches. I talked to one of the partners in Covington & Burling, and they said that the change had made a lot of difference to them, because they had had a substantial portion of their business which was referred from non-Washington lawyers. I think that's true now, like the New York firms coming to Los Angeles and San Francisco. We did a lot of business with New York firms, especially the motion picture company lawyers who referred clients to us when they had something in southern California.

Hicke: You mean business that was referred to you?

Kragen: Referred to us from them. The Loeb office had a rule that wasn't followed completely by other firms. Namely, unless the referring firm took substantial responsibility, we did not share fees, which was the canon of the ABA. I mean, it was under the rules of the bar, but it wasn't what most firms that I knew of did. Most firms, if you referred a piece of business, they would share the fee to some extent with you. And that includes even some of the very big law firms.

Hicke: What was the reason Loeb & Loeb wouldn't?

Kragen: That's what the canon of ethics of the American Bar said-- that you shouldn't share fees unless you take responsibility, and that was their position. I remember a very big case that came out. It was offered to me by a New York law firm, and I came in and told Edwin. The man who was involved had moved out to California, and they had done nothing; they just referred him. But they wanted a 25 percent referral fee, which was not unusual, I knew. Edwin said no, and they shoved the client somewhere else. Actually, he went to a fairly large and prominent law firm in Los Angeles.

The Loeb firm was a funny firm in lots of ways, but it was an extremely ethical law firm, extremely so. Some of the personal ethics of some of the individuals were not that good [laughs], but as far as the law business went, it was a tremendously careful firm--much stricter, I think, than a lot of firms.

Hicke: They did that by oversight, I guess.

Kragen: That's one of the reasons I guess Edwin didn't want branches. And we had problems. We had a situation, I remember--one of our partners was about my age and came in from Chicago; he'd moved from Chicago and we'd hired him and he became a partner about a year after I did. He was a big politician and he still is. He was a very good lawyer, but he was a dealer. I remember he came in one day with a contract on a fairly big deal, written on a Ciro's cocktail napkin. Joe Loeb I don't think ever trusted him after that.

Then he came in one day to a partners' meeting and said we'd just taken on a client to handle a particular negotiation for a purchase. Edwin Loeb says, "Don't you look at the records? We're already representing So-and-So on that." It was obvious we couldn't represent the second one, and we just completely withdrew from the deal. It was a twenty-million dollar deal. They told the people, "We're sorry, we've had a situation happen and we can't represent either of you." It was a different firm in lots of ways. It was very easygoing in lots of ways, but tough on any question of the way a law firm should operate.

Hicke: One of the problems law offices have had with branch offices, I think, is that they become profit centers and then break away from the original firm.

Kragen: That's right. The Loeb firm had people break away for all sorts of reasons. I don't know what they've done since they've had branches. For example Harold Black ran the McCutchen office in Los Angeles but now they're completely separate. They had different names then--McCutchen Something & Black down south--but now they're completely separate. The McCutchen office down there has no connection, so that's probably what happened.

But there's a lot more defection--like Bronson lost all of its tax department at one time, about four years ago now. And Chickering & Gregory lost a lot of people. As you get larger, I think it's harder to hold people because one group or another feel they're not being treated properly. And there have been a lot of breakaways. The Steinhart firm broke up and nearly went under, but now I think it's in pretty good shape as a small firm. It's doing quite well. I know my son-in-law left. He was managing partner, and he couldn't stand the fights.

The Loeb office lost people for all sorts of reasons. I think I may have told you about George Cohen, who was a very good motion picture lawyer. He was a graduate of Boalt, as a matter of fact. George was, I think, our number three partner. He'd been there thirty-five years. He came in one day to Edwin and said, "Edwin, I think my name ought to be in the firm." The firm had once been Loeb, Walker, & Loeb, and Irving Walker had left. It was before my time, but there seemed to have been some bitterness there, although they got together on a lot of things. Edwin Loeb said, "We once had a name other than Loeb & Loeb, and we're not going to change it." And George Cohen left.

Lots of the time people left as they got established. About 80 percent of the Loeb firm were Jewish, and it got the choice of all the top Jewish graduates because they all knew the firm. And it was tough for Jewish kids in that time; there were a lot of firms around here and there--Joe Loeb had worked once at O'Melveny, and after he'd been with them four or five years his brother came down and wanted to form a firm, so he left. Henry O'Melveny said, "You train those Jews and look what happens." And they didn't hire any for

years. Gibson [Dunn & Crutcher] didn't hire any for many, many years. So it was tough.

As they got established they went out on their own, or they went with other people. So Loeb always had an attrition. People like Marty Gang, who formed his own firm; Altschuler formed his own firm; I don't know, a whole group-- Irving Walker left and went with Adams, Duque & Hazeltine; he didn't form his own firm. In my day we never had any group leave to form their own firm. The most that I can remember is one person at a time. Lawyers stayed with their firms in those days a lot more than they do now.

Hicke: I think that was even true of businesses.

Kragen: Yes, I think that's true, too. A couple of times I nearly-- if Herm Selvin had been willing, when I got mad at something that was happening, I was going to leave. Herm and I talked about it, but he felt so loyal to Edwin Loeb that he decided he couldn't do it. Because he was by far the leading lawyer in the firm. We were going to form our own firm, which I think would have been a very successful law firm--because of him.

Hicke: I think you would have been key to the success, too.

Kragen: Well, in my field I was fairly well known. But we never did it. When I decided to come up here, Edwin was really delighted because I wasn't going to leave to be a competitor. Because I would have taken with me a lot of the motion picture controller's group; I think they would all have gone with me if I had left. Anyhow, that's the way it is.

Hicke: That's quite a contrast to the way things are today.

Kragen: Yes, it's really different. As I say, the firm just stayed about the same. It grew very slowly but always a little bit. I think when I came there in '44 we had about thirty-five lawyers, and when I left in '52 we had forty-two lawyers.

Hicke: Didn't members leave the firm during the war and come back afterwards?

Kragen: Yes, Selvin was in the navy, Keesling was in the army, Dwight Stevenson was in some service. We didn't have a lot leave, but we had some, and most of them came back. What we had at that firm was a number of people who left to go to the

studios, like Alvin Asher went to Metro, and so did Saul Rothenberg. Universal made four or five overtures to me to come out there, and we just never could get together. I don't think I would have gone, but we talked about it.

One of our major non-motion-picture clients wanted me to come with them as house counsel, and offered me a percentage of the business and everything. It was a very nice deal, but I felt I was going to be a businessman and not a lawyer, and I didn't want to be a businessman. But that happened to a lot of our people, and some took it. A lot of them got offers from clients. Union Bank, which we represented, took somebody before my time and then made offers to other people, but nobody left during my period.

Alumni Council

Kragen: You wanted to know about the Alumni Council, you said. Basically, my first contact with the Alumni Council was in relation to the Lair of the Bear, because I went on the camp committee about the third year the camp was created.

Hicke: And that was run by the Alumni Council?

Kragen: Yes. So I had some contact then. Then when I became vice chancellor, the alumni were one of my responsibilities. That's when I first met Dave Gardner. He was working at the Alumni Association, and Mike Koll and Dick Erickson and the rest of them--Stan McCaffrey. Oh, I'd met them before. I went to nearly all the Alumni Council meetings, representing the chancellor. During that period I made a report every meeting on what was happening on the campus and so forth.

Then when I left the chancellor's office, Strong--and later Meyerson and Heyns--asked me to continue as liaison for them to the Council. I stayed on until I got terribly annoyed at an appointment the chancellor made--[John] Searle, a philosophy professor, who'd been one of our faculty who had opposed everything we tried to do. He was what I considered to be one of the radicals. He was hired by the chancellor's office. He had been so much trouble that I went in to [Earl F.] Bud Cheit and said, "How can you have done this?" He said, "Oh, this is the way to convert him." And he was

right. I was wrong. Because John came over and was a very good man.

But I got so annoyed that I said I didn't want anything more to do with it, and I quit then. That was three years into Roger Heyns' term. Then about a year or two later I went on the Council as the Boalt Hall representative, and I stayed on for about ten years, I guess.

Hicke: What kinds of changes did you see over the years?

Kragen: I should say this: when I first went in, the Council seemed to be McCaffrey and then Erickson; it was one of those rubber stamp outfits. Then when we had our problems in '64, there were tremendous gripes about the University. The Alumni Council and the permanent, paid office people and the president and so forth tried to use the Council much more actively to get a positive view of what was happening at the University and to understand what was happening, explain it, get these people to go out and sort of quiet the people in their own communities on the problems.

Hicke: You mean the people on the Council--?

Kragen: The management and the elected officers I think generally tried to defuse the situation, I guess. I think from that time, however, there was much more questioning of what was happening in the Council itself, and much more hands-on by the Council on some phases of the operation.

Hicke: They wanted more information or more say?

Kragen: They wanted more information, and a management proposal didn't necessarily go through, which it would have when I first came on. Really, anything that McCaffrey or Erickson wanted went through with no problem, and it didn't from '64 on.

Hicke: Do you remember any examples?

Kragen: No, I can't think of anything specific. But I remember that's the feeling I had. I don't know what it's like now; I haven't been on for, oh, quite a few years now.

Hicke: Can you give me an idea of what years we're talking about here?

Kragen: I first started in 1960 and then became liaison in '64 after I left the chancellor's office. I was on for about three years then, until about '67 or '68, and then in about 1970 I went on as the Boalt representative and stayed probably until 1980 (I'm not sure exactly). I decided that was enough, and Jim Hill from here is still, I think, the Boalt Hall representative.

The only reason I went on as the Boalt representative was that Boalt had never had a representative. It's in the provision of the Council and everything that the various professional schools can send a representative, but Boalt had never bothered. And they couldn't get the officers of our alumni to regularly do it. I thought we ought to. There were things that came up that I'd seen in my days when I was there and that I'd put Boalt's position, and I thought they ought to be in on it. So I suggested it and agreed to do it. Finally, after about ten years I decided I'd done enough and let somebody else do it.

Hicke: By that time Boalt was interested?

Kragen: Yes. Boalt was interested, and I think they were willing to--I don't know what the situation is now; I haven't watched it lately at all. It may be that they're not getting there. I haven't talked to Hill about it at all for two or three years.

Hicke: Who did you report back to, the Boalt Hall faculty or the alumni?

Kragen: I did both. I brought it back to the Boalt Hall faculty, and then I brought it back to our Alumni Association when I thought it was of interest to them.

Hicke: Did they ever have any input for you?

Kragen: Oh, yes. For example, in the '64 period, Boalt had certain positions on the problems we had in '64 and '65. I made very clear the Boalt position--where the position was worth anything. We had a couple of them that were worth nothing!

Hicke: What were the positions?

Kragen: Basically, our position was that free speech was fine, but that free speech was for everybody and not just for the

little group that was--. We were against violence; we thought there were other ways to handle things. Right in the hottest part we had a big meeting that went on for hours here. I took the position of a strong statement, and Bob Cole from our faculty took the position of no statement or support of the recalcitrants or dissidents. We came out with a statement that was so innocuous that when we came out to tell the reporters about it, they said, "You were in for four and a half hours and came out with this?" And they were right. [laughs]

I was taking the administration position, largely, and my own feelings. We had a long--I wouldn't say bitter--discussion of the thing and came out with nothing. We tried to get some statement that would fit everybody, and we came out [with a statement that wasn't worth anything].

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Hicke: What did you then present or propose to the Alumni Council?

Kragen: We did not. They had all sorts of proposals that came up. The Alumni Council basically came, as I remember it, to a position that they wanted to do whatever was helpful to restore peace and quiet to the University and reconcile things. There were enough people there who thought that we ought to shoot down the dissidents that we couldn't get a statement there, even, that was really a strong statement for the University position.

Hicke: So they were divided also?

Kragen: They were divided, too. I think the majority probably were in support of the University administration. But there were some, and they were right--there was a lot of criticism that was appropriate. The administration made a lot of mistakes. The group that were fighting them reminded me of that situation of the weekly demonstration at the federal building. When you look out and watch them walking down to Market Street, the people with the bull horns are the same people, no matter what the demonstration. They were sort of these professionals.

If television had stayed away, we never would have had the crowds--and the crowds weren't as big as they estimated any time here. In fact, one time CBS came over on a Sunday and there was nobody around, so they hired people! They

denied it, but we had enough information at the time. Television and the media were very important; these people wanted the exposure. And then students love it, you know.

Hicke: I guess that goes back even to the days of the Spanish-American War, when there were rumors that that was started by the newspapers.

Kragen: That's right, the Hearst papers.

The Alumni Council was fun. I enjoyed it. I enjoyed meeting the people. I got to know a lot of people I hadn't known.

Hicke: Do you recall anybody in particular?

Kragen: No, there were just a lot of people who were active in the thing. We had a lot of people from the administration. Arleigh Williams was at the meetings frequently. We had people like Forrest Plant as president. We had good presidents over the years. That's a good job, the presidency of the Alumni Association. It takes a lot of time that you have to be willing to devote to it, but it's fun. You serve a year on the regents; you serve one year as sort of an observer and another year as a member of the board of regents, which is fun. I think I would have liked it, but I never had the ambition or the drive to go ahead and try to do it.

Hicke: Is that an elective position?

Kragen: Yes. It's elected by the Council.

Hicke: So you have to campaign.

Kragen: Yes, you have to do a little political stuff and keep in with various people. They had good men. For a part of that period the Alumni Association was a major fund-raising unit.

Hicke: For the University?

Kragen: Well, it was separate, but the money was for the University. The University had its own fund raising, but it wasn't very organized. You know, for many years our fund raising was in Bob Sproul's back pocket. I mean, if we needed five million for something, he'd decide what it was and go over and talk to [Steve] Bechtel or to [Walter] Haas or three or four

people and get the money. We didn't have any campaign. The only thing you ever were asked for were alumni dues. Then the alumni started fund raising, which was moderately successful, I think.

Then I think it arrived at the stage where there was competition. The University wanted to launch a much bigger campaign, so the University made a deal and took it over. During part of the period that I was with the Council, there was a lot of fund-raising activity, too, which was a big portion. Now they don't do anything directly in this regard, although of course the alumni and the association are important parts of fund raising.

Hicke: Because it's been taken over by the University?

Kragen: Yes. Oh, they participate. I mean, people work with the fund-raising units, but there's no alumni fund raising. You get a dues statement and that's all.

I'll never forget, during the time Erickson was the executive director of the Alumni Association, one of the traditions of the meetings--and there were a lot of people; there were maybe forty people there at a meeting--was that the first thing Erickson would do was get up and introduce by name everybody at the meeting. That was always--if he started off a meeting without doing that, somebody would call his attention to it. [laughs]

Hicke: Was that for the sake of the people there?

Kragen: Partly, I think. But it was partly a sort of a gimmick. Everybody was waiting for him to make a mistake, you know--that type of thing. It's hard. I thought I had a good memory, but I couldn't have done it.

Academic Senate

Kragen: One thing I can put in a note on is about the Academic Senate. It was interesting to me--I came up here figuring that you came to the University and there was no politics, and it was a quiet, academic life, in contrast to my partnership politics and the politics of the legislature and so forth. Well, I quickly found that the politics of the

legislature and the Academic Senate politics are not much different.

The first thing that occurred was something that happened with one of my own colleagues. There was a hot issue (I can't remember what it was), and a number of us were against it. We went to the Academic Senate meeting. Academic Senate meetings in those days were much better attended than they were as time went on. They've got some new deal now; I haven't paid much attention to it.

Hicke: They're open for any member of the faculty?

Kragen: Yes, any tenured professor, from associate professor up. In any event, when this particular hot issue was on we came to the meeting. It was brought up, we had the votes, we killed it. I looked at the calendar and it had nothing much else on it that I or a lot of us were interested in, so we left. The next day I found that the same issue had been brought up--by one of my own colleagues--and reconsidered and passed.

I confronted this colleague of mine, and he said, "Adrian, you've got to learn--you're a full-time politician and you should know that you don't leave before the meeting is over." I said I thought an academic life was different, and he said, "No. We waited until we figured enough of you had left, and then we brought it up again."

Hicke: He was perfectly open about it.

Kragen: Oh, he's a maneuverer anyway. But that was normal. I found a number of things in the politics of the Academic Senate. But then after the '64 thing it sort of quieted down. That was so much tension, and there were tremendous crowds at the Academic Senate meetings and tremendous bitterness. After that, interest in the Academic Senate went to hell. Then we formed the Representative Assembly, thinking that would take on the governance better, and that didn't work. Now they're going back to something else, I'm not quite sure what.

Hicke: In place of the Academic Senate?

Kragen: Well, you had a meeting of the Academic Senate, but only infrequently. The main, regular meetings were of the Representative Assembly, where there were certain people nominated by each department. Anybody could go; it was open to anybody.

Hicke: And vote?

Kragen: And vote, I think. That I can't remember exactly. I think maybe you couldn't vote; only the representatives could vote, I think. But it was open to anybody to get up and speak.

Hicke: The Academic Senate is appointed?

Kragen: No, the Representative Assembly was appointed by the departments. Every member of the Academic Senate is a member. But it's changed quite a bit. They don't get quorums; they have had a terrible time getting quorums. That's why they went to the Representative Assembly--because they couldn't get a quorum. They thought this would do a better job, and I don't think it did, from what I hear. I went to one or two Representative Assembly meetings early when I was still active, but I haven't been to anything--since I retired in '73, I haven't been to an Academic Senate meeting, I've not been to a Boalt faculty meeting, I've not cast a vote. I'm going to keep that record clear. Men and women who are now faculty members ought to run their own lives and not let the old bucks worry about it.

Hicke: So that's a conscious decision.

Kragen: Oh, yes, definitely.

Emeriti

Kragen: In contrast to some faculties, this faculty has been very liberal; emeriti have all the privileges as part of the governing body that they had before they retired. Emeriti faculty members can speak, they can vote. The rule is that emeriti members are entitled to vote except on personnel matters, and on personnel matters if two-thirds of the faculty agree that they should. I don't know that we've ever taken a vote, but I know that now some of our emeriti members go to the meetings. We've got about six emeriti, and a couple of them I know are active.

But I just deliberately decided--in the first place because I can't keep my mouth shut, and I get exasperated. I think some of the things the faculty have done over the years



Meeting of the Council of University Emeritii Association (Kragen will head the council in 1992).

are nonsense, and I've said so. One thing about this faculty, no matter what you say at a meeting you're always friendly; nobody gets mad at you. But I just get exasperated and irritated at meetings when I think they're doing things that I think are stupid. They may not be stupid, but I think they're stupid.

I'm sort of a conservative, and I don't think that's the majority of the faculty. For a while--I don't know about now, because I don't watch them--we had some really what I considered semi-radical members, and we had philosophical battles of various sorts. So I decided the best way for me and for the faculty was not to have anything to do with it. I participate--I help them with fund raising; I participate in things like that, but voting and meetings they can keep.

Hicke: You retired from the battlefield.

Kragen: That's right. I had enough battles. That's why I get a kick out of Rossmoor, because they've got so many little battles going on. They've got a couple of big battles going on. I thought when you moved out there, you were retired; I didn't want to have anything to do with politics. Somebody talked to me about running for one of the mutuals which govern us there. I said, "You think I'm crazy? I'm not going to get into that." But one of my friends is running now for one of them, I notice, and others have. There are a number of very active people.

Part of it is the problem of active people who retire and haven't got enough to do. So they have to find something to do. They get irritated, and they experience all the things I am sure I would experience if I got involved. Organizations all seem to be the same. You never can get one that's peaceful and quiet completely.

Hicke: It might not be worthy of the name.

Kragen: It might not be fun.

Involvement with Sports

Kragen: Talking about people, the Denver Broncos have a lineman named Greg Kragen. If you watch pro football games at all, when

they start the game they give the defensive and offensive lineups. I looked, and they were giving the defensive lineup for the Denver Broncos, and included was the name Ken Kragen--Ken, of course, instead of Greg. Ken's my son! That was a kick, so I had to call Ken and tell him. I don't know how that happened, because I've seen it a lot of times and they've always had "Greg Kragen." I wondered where he was from and who his family is.

Hicke: I know that you're very interested in sports. Maybe you can tell me what you've done in the way of promoting sports. I know you play golf and that sort of thing, but how about promoting Cal sports?

Kragen: The reason I went into the chancellor's office was to handle the transfer of intercollegiate athletics from the ASUC to the University. Since then I've been quite active in various phases of the California athletic scene; I've always been interested. Luckily I had a wife who was as interested as I was. We went to everything. There was a group of us who for the first fifteen years I was here used to go down to baseball. Also we went together to football and basketball. We had basically the same seats in basketball for thirty-five years. So I was very interested in it always.

In 1960 I got very close to the actual operation. I got very much involved in picking coaches. Three of the football coaches I was involved in picking, not very successfully.

Hicke: Which ones were they?

Kragen: There was Marv Levy, [Ray] Willsey, and [Roger] Theder. And I've been fairly active with the fund-raising group, the Bear Backers, and the women's group. I'm on the committees of the men's group, the Bear Backers Council, and the Hall of Fame Selection Committee, and others. So I do a certain amount of work.

I chaired a committee--who appointed it? Maybe it was [Albert] Bowker; I'm not sure what chancellor--to consider the position of women's sports and men's sports; to look over the whole intercollegiate athletic picture. We met for a year frequently and had lots of testimony and lots of discussions. We had a number of knowledgeable people on the committee. I was, as I was with the building of the dorms, sort of the coordinator; I wasn't a knowledgeable person as to a lot of the stuff.



Lawrence Berkeley Laboratory

University of California
Berkeley, California 94720
Telephone 415/843-2740

May 9, 1977

Mr. Ken Kragen
Management Three
9744 Wilshire Boulevard
Beverly Hills, California 90212

Dear Ken:

This is in reply to your letter of May 4, 1977. I haven't been able to think of anything humorous, but I have a memorable recollection.

Immediately following Pete Elliott's resignation as football coach at Berkeley at the end of 1959, I--as Chancellor--was under tremendous pressure to appoint Eddie Erdelatz, whose athletic philosophy was totally at variance with the ethical standards at Berkeley. The pressure from a certain class of alumni, students and sportswriters for the appointment of Erdelatz rapidly became almost intolerable. I turned to your dad, who was a Vice Chancellor, for help.

It was a pleasure to watch him handle the situation. He served as chairman of a three-man special committee with the responsibility to make an acceptable recommendation for a football coach. The other two members of the committee were Arleigh Williams, highly respected in the Berkeley athletic community, and Cort Majors, highly respected among Berkeley alumni and athletic boosters. I suggested to your dad that Marvin Levy, a highly successful coach at the University of New Mexico, would have the combination of technical skills, personality and intellectual quality that we would want in a coach for Berkeley. In a series of meetings of his special committee, your dad--with consummate skill and to my grateful amazement--succeeded in bringing in the unanimous recommendation for the appointment of Marvin Levy. No one could quarrel with the recommendation of such a prestigious committee, and the subsequent appointment of Levy went ahead smoothly and was widely accepted.

Ken Kragen

- 2 -

May 9, 1977

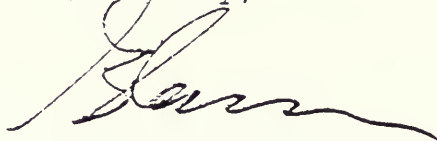
I will continue to try to think of other instances. If I come up with anything worthwhile, I certainly will get in touch with you.

I would like to attend the party; but, if it is held on June 4, I have scheduling problems. I will be going to Montreal, Canada on June 1 and presently am scheduled to return to the Oakland airport at about nine o'clock on the evening of June 4.

My phone number at my Lawrence Berkeley Laboratory office is (415) 843-2740, extension 5661; at home in Lafayette the number is (415) 283-3418.

With best regards,

Cordially,

A handwritten signature in cursive script, appearing to read "Glenn", with a long horizontal flourish extending to the right.

Glenn T. Seaborg

GTS/sms

But we had lots of discussions, and we finally came to the recommendation which is what we have now, namely that in contrast to, for example, Stanford, the men's and women's intercollegiate sports should be separate. That there should be a director for the men's sports and a director for the women's sports, which I still think was a good decision that the committee came to. Because I think that, no matter what, you're going to have problems, and I think Stanford has had them to some extent with its women's sports. Because they have a man who's the director of both, and if something's wrong they blame the man. This way we have separate organizations, and they seem to be working fairly well. The women's especially is doing quite well.

Hicke: So that was the main issue that this committee studied?

Kragen: We looked over the whole operation, and we made a lot of recommendations. But the recommendation that I consider the most important was this separation. We did some things, for example, on control of the athletic departments and the duties of the faculty athletic representative to the NCAA and the PAC 10, and what his job was in watching over to see that we didn't get into trouble with either organization. That type of thing. We looked at the whole organization of athletics.

Hicke: When was this committee?

Kragen: It was before I retired, and I retired in '73. Early seventies. Maybe it was Heyns who appointed it. I can't remember.

Hicke: Did he give you a list of issues to look at?

Kragen: No. Basically they said they wanted us to look over the program and make recommendations as to the handling of women's intercollegiate sports, as well as the whole operation. And we did. We looked it over and made a very extensive report.

Hicke: Was that part of your job as a faculty member?

Kragen: No. Well, the chancellor asked me to do it, that's all, and I did it. I could have said no. But I was interested, and it was nice. Various things of that sort have kept me in the operations of the department. Now, the reason I have to

leave early today is because I go over every Monday during football season to the San Francisco Grid Club. The coach goes over, and we have about a hundred people usually, or a little better, there at the Bohemian Club. After every football game we meet. It's a bunch of really Old Blues-- Cal rooters that live and die with the Cal team. Mostly die. [laughter]

When I went to San Francisco to work at Steinhart and then Hastings, I was having lunch with Walter Haas one day. I said something about having heard about the San Francisco Grid Club and that I'd like to join. Walter said, "We've got a long waiting list, but let me see." And the next meeting I was voted in. Well, I'd had a lot of contact in the things I'd done, and Walter had a lot of power or clout. So I've been in now over ten years.

Hicke: It's sociable?

Kragen: That's all. We pay quite a bit of money for it yearly, and you pay for lunches, which are quite expensive, whether you go or not; you pay for eleven lunches, and you pay dues. Then you're required to make a contribution to the Bear Backer program. But, what the heck, it's fun.

Hicke: The money goes to the athletic program?

Kragen: Yes. [David] Maggard and [Bruce] Snyder, and once in a while another coach, and once a year the chancellor usually comes over. Mac [Watson] Laetsch comes over now every week. They show the pictures of the prior week's game. The last meeting we host the graduating seniors. And they do some other things. They have a group that does career counseling. You know, these are successful businessmen, most of them, and lawyers, and they do career counseling for the athletes. And they have a certain number of functions a year where they meet with the athletes. We all offer our services, in effect. I've had a number of people want to go to law school or other things.

I like sports, that's all. I'm a great spectator. I was never a very good athlete, but I'm a hell of a good spectator. I watched two football games yesterday. I really would normally have been out playing golf, but with my damned rib I can't play; so I sat home yesterday and watched. I'll watch the A's game tomorrow night, sure. I'm very interested. I see that Roy Eisenhower held ten tickets for

each of those playoff games for the law school, so we could buy them if we wanted to. But it's going to be televised, and to fight those crowds is not my idea [of a good time].

Hicke: You've had a really interesting career, and I really appreciate your sharing it with us.

Kragen: Thank you. I appreciated doing it. It was fun.

Transcribers: Jocelyn Blakeman and Judy Smith

Final Typist: Judy Smith



1989--"Reality Mimics Art." Kragen poses in front of portraits done by grandson Kevin Merritt as a teenager.



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Earl Warren Oral History Project

Adrian Kragen

STATE AND INDUSTRY INTERESTS IN TAXATION,
AND OBSERVATIONS OF EARL WARREN

An Interview Conducted by
Gabrielle Morris



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INTERVIEW HISTORY

During the planning of the Earl Warren Oral History Project, Adrian Kragen was an early and helpful advisor from the Boalt Hall School of Law. In informal conversations from time to time, the Regional Oral History Office learned that he had, indeed, been a member of Earl Warren's attorney general staff and had kept in touch with the Warrens over the years.

This brief introduction was recorded on 16 January 1975 to preserve Mr. Kragen's recollections of his work as deputy attorney general for tax matters, and subsequent events. In it, Mr. Kragen conveys a sense of warm appreciation for the opportunity of knowing Warren and of his affection and concern for Mrs. Warren.

A compact, energetic person, Mr. Kragen made time in a busy schedule to talk about old times in his small office on the top floor of Boalt Hall, surrounded by stacks of legal papers and reports, a green eyeshade perched on his brow seeming to help him pick the appropriate incident from his memory. He described Warren's careful supervision of the responsibilities of the attorney general's office and some of the political issues of those early years of World War II, and touched briefly on contrasts with the attorney general's office under Robert Kenny, with whom Kragen also served.

A shorter portion of the interview, although a larger portion of Mr. Kragen's career, is devoted to recollections of his work as legislative representative for the motion picture and other industries. Serving as technical expert on tax matters and unemployment insurance for employers, he continued to have contact with Warren as governor during years of some lively efforts to expand insurance coverage for employees. In 1952, Mr. Kragen joined the law school faculty, later screening candidates for law clerk from western schools for the Chief Justice, and continuing to keep his hand in as legislative representative for a few clients as well as serving on a variety of civic committees.

Gabrielle Morris
Interviewer-Editor

17 January 1977
Regional Oral History Office
486 The Bancroft Library
University of California at Berkeley



I JOINING THE ATTORNEY GENERAL'S OFFICE IN 1939
 (Date of Interview: 16 January 1975)

Deputy Attorney General for Tax Matters

Morris: You were really a great help in advising us on the early stages of the Earl Warren project. Thank you for making time in your busy schedule to talk with us now about your own work with Warren when he was Attorney General and Governor.

The place to start, I think, would be: how did you happen to join the California Attorney General's office?

Kragen: Well, I was--I guess you'd say--one of Roger Traynor's protégés at that time, when the Chief became Attorney General in 1939. I was appointed as special Deputy Attorney General, to work with the tax department. Warren, wanting to beef up the tax department, asked Roger, who was then a professor of law at Boalt, to get two people for him, and he got Valentine Brooks and me. When we came into the Attorney General's office--I had never met Warren, even though he was a good friend of my wife's father.

Morris: That's interesting.

Kragen: I had never met him at all, just knew of him. I went over to the AG's office at Roger's suggestion; met the Chief, and he said, "I hear you're interested in coming into the tax department in this office."

I replied, "I am."

He said, "Do you think you can do the job?"

I answered, "I think I can." That's all we said.

I was a Democrat. Maybe he knew it, but he didn't ask me; and he didn't ask me anything about my family or anything. Six months later, he asked me one day when a group of us were walking down the street on our way to

Kragen: lunch, "Adrian, why didn't you tell me you were Harry Bercovich's son-in-law?"

I said, "I didn't think it was important." He and Harry had been very close, Harry had served on his grand jury and other things, and they were good friends.

Morris: Mr. Bercovich was an Oakland businessman?

Kragen: That's right, yes.

Morris: And he'd been active in Oakland and Alameda County affairs?

Kragen: That's right. He was a friend of Warren's. He supported him, and he didn't know--[laughs]

Morris: Was your father-in-law a Democrat?

Kragen: I think he must have been a Republican. I'm sure he was.

Morris: I understand that in the thirties, most of Oakland was pretty--

Kragen: Yes. I'm sure he was a Republican, but I really didn't pay much attention to it. My whole family were all Republicans. I just was a Democrat because I liked the people who were running. I've never been very much of a party man one way or the other. But Warren didn't pay any attention to it.

Morris: That's one of the comments that's made again and again, that he really practiced a bi-partisan, or non-partisan approach.

Kragen: Yes. He certainly did.

Morris: Did he outline what he had in mind, as to the tax section?

Kragen: Well, I had had some of that from Roger Traynor previously, but mainly he said that he wanted to have a fine tax department, that he wanted people who were really interested and willing to work in it, people who could do a good job. He said, "Traynor said you can do a good job."

Morris: Had Traynor been one of your professors here at Boalt?

Kragen: Oh, yes. I went to law school because of Traynor. I

Kragen: never intended to go to law school, but I took the first undergraduate course he taught when he was first appointed to the faculty, and I thought it was so great, I decided to become a lawyer.

Morris: I see. He was teaching an undergraduate course, not--

Kragen: He taught Juris 10 A, B which was Blackstone in those days. I took it because somebody had told me it was an easy course. But somebody else had taught this the semester before, not Roger, and it wasn't an easy course, but I loved it.

Morris: So he was a teaching assistant at that time?

Kragen: No, he had gotten a PhD and JD here, at the same time. I think maybe he received the PhD first. I worked with him when I was here. I became very close to Roger.

Morris: What were the tax issues that appealed to Mr. Traynor and yourself?

Kragen: Well, Roger was interested generally in the theory of taxation. I really wasn't as scholarly. I was sort of interested in the fact that tax was a fun subject to work with, and I liked the type of thing one did, and the fact that one had to put the pieces together.

The Attorney General's office gave you a great opportunity to get at all phases of it, because we had everything there. We had personal income tax, and corporate tax, and sales tax, and property tax. One of my jobs in the office was to handle property tax matters; even though they were local, we still handled a certain number of them--I did.

Morris: In what way would you handle property tax?

Kragen: In the first place, I was the advisor to the state controller, who had the tax-deeded land program--property which had been deeded to the state because of non-payment of taxes under our system. And then, I was the advisor, through the district attorneys or county counsels, to the county auditors and tax collectors. They asked questions, and the DA's or the county counsels then directed them to the Attorney General's office, and my job was to answer the questions.

Morris: Which counties, particularly, would have come for advice?

Kragen: Oh, all of them. Every one of them, I think. During the four-and-a-half years I was there, I think every county had some questions that came up. And then, I talked every year at the yearly meetings of both the auditors and tax collectors. So that I had quite a lot of contact with them.

There was a lot of work. I was in every court--that was one thing the Chief did. He really gave you great opportunities to participate. He gave you a job to do, and you did it, and he didn't take over the fat plums himself. You know, that's true of some officials in office. In the Supreme Court of the United States, they'll take the case. They'll get there and argue it. You'll prepare it and they'll argue it.

Morris: You do the work, and they go into court.

Kragen: And that's true of some law firms. But the Chief let you do it. I mean, I had great opportunities. I was in every court in the State of California, and in the Supreme Court of the United States, frequently.

Morris: Yes. I see your commission to practice before the Supreme Court on the wall.

Kragen: Well, actually all you need to do is pay twenty-five dollars and you get that.

Morris: You were admitted to practice in 1942.

Kragen: I guess it was the 1941-1942 term; yes. In 1941 I was injured; I was out of the office three months.

Morris: Oh, dear. Not in the line of duty--?

Kragen: In the line of duty. [Laughs.]

Morris: Really? Is that a story you'd like to tell us?

Kragen: It was nothing. It's just, I was--I went to Sacramento one day every week, and this particular day I was ready to come home, and the County Auditor of Alameda County, who was then president of the auditors' association, wanted to talk to me about a problem. He said, "How about driving back with me?" I usually took the train, but that day I drove back with him, and, unfortunately, somebody ran into us, and killed him and injured me.

Morris: Good heavens!

Kragen: And burned himself to death. So it was one of those things. It wasn't pleasant.

Morris: The main office was in San Francisco in those days?

Kragen: Yes. In those days, the Attorney General's main office was in San Francisco, and we also had an office up in Sacramento and another one in Los Angeles. I had lunch with one of the fellows who was in that office with me, yesterday--we decided we must have had about seventy lawyers, I'm not actually sure.

Morris: In the whole department?

Kragen: In the whole department. Today they have two hundred and six, I think. (I understand there are over 400 but I do not really know.)

Morris: That's interesting.* And there were permanent staff in the Sacramento office and the Los Angeles office?

Kragen: Yes.

Morris: You were a Deputy Attorney General, and you would go to the different offices regularly, or just when needed?

Kragen: Well, no. The arrangement the Chief had worked out--I think it probably was worked out before he came in--was that one of the tax deputies would go up to Sacramento once a week to meet with the people he worked with in the controller's office and the Board of Equalization and the Franchise Tax Board. I'd spend a day going from office to office, and talking to them about problems that had come up since I was up last time.

Morris: Sort of the routine, flow of business--?

Kragen: That was one way they had of satisfying these people that they were getting some service, and still keeping the main office in San Francisco.

*Asked on the transcript how many were deputies for tax matters in his day, Kragen replied: four.

Morris: What was the thinking on the main office being in San Francisco?

Kragen: I think it was the same as the Supreme Court. They like it better. [Laughs.] That's all. In fact, when Bob Kenny came in--one of the reasons I left the office was that Bob Kenny sort of decided that he was going to move the heads of the various departments--and I was head of the tax department--up to Sacramento because the head-of-the-office people should be in Sacramento; and nobody liked it, and it never happened, but he announced he was going to do it. [Laughs.]

Morris: I see. That's interesting.

Kragen: And Warren never did it. Warren just went along, and we operated out of San Francisco, although he was in Sacramento a lot--you have to be. There's been pressure, you know, to get the Supreme Court to move up there.

Morris: Well, I've been aware of it with some other departments. I know the Department of Public Health has always been in San Francisco or Berkeley, and I gather there's been, over the years, some hassle, as you would use that word--

Kragen: There's a lot of pressure for Sacramento from--the legislators are up there, you know, and they like to have the people around, and the Sacramento Chamber of Commerce pushes, I'm sure, and everything. But, our main office and most of our work was in San Francisco.

Court Appearances

Morris: Going back to the court appearance part of it, did Warren ever appear in court on a matter of particular concern?

Kragen: I can't remember. I have a sort of vague recollection that he was in the Supreme Court on some matter once, when there were a lot of political problems involved, but I'm not absolutely sure. I have a recollection, that on some really important matters he appeared, but he didn't appear in court otherwise.

By that time--he was not a trial lawyer, or an appellate lawyer. He really was the administrative head of the office and acted that way.

Morris: Why is there a need for the Attorney General's office to go to court? Is this an adversary kind of thing?

Kragen: Oh, yes, sure. For example, the Attorney General's office handles, in my field, all of the defense of all of the state tax cases, with the exception of the inheritance tax, and gift tax, which have their own set of lawyers. We handled all the sales tax cases, both the collection and refund cases, all the corporate income and franchise tax and personal income tax, all the gas tax cases, all the motor vehicle transportation tax cases--all that stuff--private car tax cases, all of them are handled by the Attorney General.

The Attorney General also handles all the appeals in criminal cases. They have seventy people now, they told me yesterday, in the office, handling nothing but criminal appeals.

Morris: Would that have been your territory?

Kragen: No. That's not mine. I don't know anything about criminal appeals.

Morris: Who handled the criminal appeals when you were there?

Kragen: Well, they had staff. I think in my day, the Chief had everybody but the tax department handle them. They spread them around. But the tax department, he just thought we were--well, of course, we were so busy. We were the busiest single department in the office, and secondly, he just didn't think we should get into that stuff, I guess.

Morris: What kinds of issues would make you go to court, in a tax case?

Kragen: Well, for example, Standard Oil sought a refund of gas tax paid. In one case, I went to the United States Supreme Court on the question of whether post exchanges are instrumentalities of the United States for the purpose of our right to collect gasoline tax.

Morris: If they were federal government, they would not have to pay state taxes?

Kragen: That's right. And they were so held. We lost the case. Another case, a question of the Belt Line railroad, which now is part of the Port of San Francisco--city, but was then the state. The question was whether

Kragen: the federal government could levy a tax on the transportation by the state Belt Line railroad.

We had numerous sales and use tax cases. In DeAryan vs. Akers, which is a very famous case, the question was whether the state Board of Equalization could set a bracket system, so that over fifteen cents, you charge one cent, under fifteen cents, nothing. So it wasn't the exact percentage set forth in the statutes, but it was by brackets. The California Supreme Court held the bracket system was valid.

We had such things as the question of whether dividends from the stock held by the Southern Pacific were taxable in the state of California, since Southern Pacific was a Kentucky corporation, but had its principal place of office in San Francisco. That's the type of thing we had, together with a lot of minor cases. I had one involving the question of whether there was a sales tax on the sale of chinchillas for breeding.

Morris: Oh, my heavens!

Kragen: We went to the district court of appeals on that, and then the state supreme court refused a hearing. And, you know, this--

Morris: The whole matter of chinchilla breeding had some question of whether it was--

Kragen: Sale of tangible personal property. And they argued it wasn't; it was a sale of services.

Morris: Wasn't it also a kind of a faddy thing? You were supposed to be able to make a million dollars breeding chinchillas.

Kragen: Oh, yes, sure. You were going to make a fortune. As far as I know, nobody made anything. Sure. There was an outfit called Chapman Chinchilla Farms, which was selling these chinchilla pairs to people all over the state and the country.

Morris: Was the question ever raised as to whether there was fraud or misrepresentation on this business offer?

Kragen: No, not in that question. That wasn't my baby.

Then on these questions of tax-deeded land, I had a lot of cases on the question of whether the local

Kragen: assessors and tax collectors and auditors had done the proper thing in handling the assessment or levy of tax on property which was subsequently deeded to the state.

Morris: You were handling these in 1939-40, the end of the depression--did the state take over a considerable amount of property for non-payment of taxes?

Kragen: Well, the tax-deeded land cases tapered off a great deal because of the change in the economy. But the rest of the problems, I would say, increased. We got rid of a lot of the constitutional questions in the sales tax, early. So they were pretty mundane after that, but the other questions, the questions in the franchise and personal income tax and some of the other questions still kept up. And it has been, always, a very busy office, in the tax area.

II STATE FISCAL AUTHORITIES

Morris: I can see that. You said that you had weekly contact with the Franchise Tax Board and the controller's office--

Kragen: Every week, yes.

Morris: And the Board of Equalization. Who would decide whether you were going to go to court or whether it would be settled by negotiation?

Kragen: Generally, we would decide, finally. But the fact was that unless we felt very strongly that the matter should be cited, we'd drop it. If the Board of Equalization, for example, decided it was something they didn't want to have tested this time, we'd usually do what they wanted. Normally, they'd take our advice on whether to file an action or defend one. Once or twice there were some political pressures and they didn't want to do anything, but we went into the Chief and he told us to do what we thought was right. We said we wanted to go ahead, and we went ahead on it. I remember on one involving Pacific Greyhound Lines, we went ahead.

Morris: What kind of political pressures would these be?

Kragen: Well, the Greyhound people thought the cases were "outrageous". They had people approach them, I guess. I don't know. I just know that we got told that, well, they thought that probably we shouldn't go ahead. Once in a while it was the other way; the board thought that we would lose the case, and that they would probably be worse off if we lost it, because of the repercussions on other tax levies.

Morris: That would be a consideration.

Kragen: On the other hand, I remember when Warren was running for governor the first time, the newspapers tried to pressure him into having me drop a case which ultimately might have caused them to have a heavy tax burden. He

- Kragen: just told them that he thought it was important that we go ahead, and that was their answer.
- Morris: What kind of a financial burden would there be on the newspapers?
- Kragen: We were taking the position that we would collect use tax from the printers. I had advised the board that, if the court went against us on that case, under the language of the sales tax legislation, we would have to go directly against the newspaper publishers and charge sales tax on their gross sales. And they didn't want that. We happened, luckily, to win the case, and we didn't have to go against them. And then they changed the law, actually, to take care of it.
- Morris: To the publishers' advantage?
- Kragen: Yes.
- Morris: The Board of Equalization later became quite controversial. Did you have any forewarnings of this in liquor license matters?
- Kragen: The Board of Equalization doesn't handle liquor licensing any more.
- Morris: That's true, but in the late 'forties--
- Kragen: Well, I wasn't involved with that. I was out of the office by that time. I had no problems; other people did on the liquor tax. I never had anything to do with the liquor end of it.
- Morris: By 1949, the press was having a field day with these Board of Equalization troubles, and the newspaper articles I read indicated that this had been going on for some years.
- Kragen: Yes, sure. It was always--you know, the way it was politically set up. During part of that period, the fellow who ran away to Mexico--Bill Bonelli--was on it, and he was a very political animal. Stewart was on it, also a very political animal--a very nice guy, but very political. And they were much more susceptible to things than I think the board has been since.
- Morris: Weren't there charges that there were, quote, "criminal connections and associations"?

- Kragen: That was on Bonelli. But they didn't get that far on anybody else. It was always a very controversial group, but in the area I was involved with, really, we didn't have that problem, largely because Dixwell Pierce, who was the secretary of the board, was a very steady influence. He was a good tax man, and he was a very steady influence in the tax field.
- Morris: In other words, he moderated--
- Kragen: Yes. He kept the board pretty much on an even track in this area.
- Morris: I see. I also have heard some comments that Mr. Bonelli, in earlier years, was well thought of as a good tax man. Did you have any contact with him?
- Kragen: Oh, yes. He was a very good tax man. He was a professor of political science, I think, or in government--
- Morris: In Southern California?
- Kragen: Yes, sure. That's where he came from. He was all right. He just got to be quite a political character and a free spender, free-wheeler. He got corrupted by Sacramento, probably. [laughter]
- Morris: Was Mr. Pierce a career employee?
- Kragen: Yes. He was a graduate of this school [U.C.] and Roger Traynor put him into the Board of Equalization, or helped put him in. I don't know.
- Morris: Was he in a civil service exempt spot?
- Kragen: I think not. The secretary probably was appointed, but he got reappointed all the time. I'm not absolutely certain of that.
- Morris: That's an interesting comment that the top career man can exert quite a lot of influence on the board.
- Kragen: Oh, it does. See, these people have to have guidance-- Dix was a very good man, and he guided them very well. It's true now. They get a lot of guidance from their top people.
- Morris: Was this kind of relationship evident in the controller's office and the treasurer's office?

Kragen: Well, the treasurer was a--I don't know. The controller's office was a fairly political office in those days. I really can't say; it was a different operation. The controller sat on the Franchise Tax Board--well, I guess not at that time. They had a franchise tax commissioner then, Charlie McColgan, but the controller's office was more political. It was supported by the appraisers. They were its political and financial assistants. So it was a different set-up. Much different.

Morris: What about things like the Highway Commission and the Horse Racing Board? Did they ever come to you--

Kragen: No, I had no contact with them. None at all.

Morris: Was that because they were special funds with earmarked revenues--like the gas tax which went right back into highway construction?

Kragen: I never was concerned with the spending of money. I was only concerned with the collecting of it. And the Chief had--I don't remember who he had handling highways in those days.

Morris: Reading some of the textbooks on California government, they talk about the issue being a choice between the equity of who pays what, in terms of taxation, balanced off against the state's revenue needs. Is that a concern in how the tax division--

Kragen: Oh, I don't really think so. We had, by far, the best-administered tax system in the country, of the state tax systems, largely due to the way the various offices operated and the way the Attorney General's office operated. Traynor was the advisor to the Attorney General, as well as the advisor to the Board of Equalization, and we had a very broad, pretty equal sort of a system.

Groups argued that the sales tax was regressive, and hit the small man too much, but the arguments weren't really very heavy. Our biggest arguments, I guess, were probably on the Bank and Corporation Franchise Tax Act, on how big the banks and financial corporations should be taxed--what could we do under the federal law, and how should we do it? And the insurance companies have always gotten a special break; still do.

- Morris: What's the history of that? Isn't it gross premiums they're taxed on?
- Kragen: Gross premiums, yes. Well, the theory was to encourage (I guess. It was long before I was into it.) but the theory was to encourage people to protect their future, their families by insurance. Make it so that they could get insurance at a lesser rate. And also, probably, the insurance lobby was pretty strong when it first came in, when the constitutional provision came in.
- Morris: That's interesting. In other words, there's a sense that the insurance industry maybe was more powerful than banks or corporations-- ?
- Kragen: Well, you see, I don't think that's necessarily true. But the fact is that that went in very early, at a time when the tax on other organizations wasn't very heavy either. But they got the rate in the constitution originally, and others just weren't smart enough to get it in the constitution, probably. I don't really know the background.
- Morris: Did you get involved at all in tax legislation?
- Kragen: Yes, the Chief made me watch it, and I went up--I drafted bills for the controller and our office had something to do with the drafting of various tax measures. And we sometimes joined with the other departments in supporting something which we thought was important for us in enforcement in our end of the thing.
- Of course, when he became Governor, for his first term, the Attorney General's office had me go up to Sacramento and work on the various tax bills, and give the Governor memoranda on any bill that was coming to his desk.
- Morris: From the legislature.
- Kragen: From the legislature. I wrote memoranda on whether the bill was good, bad or indifferent, and what was good about it. I did all that type of memorandum for Warren when he was Governor. So I was involved in tax legislation then.

III POLITICAL ISSUES AND ATTORNEY GENERAL WARREN

The Republicans v. Governor Olson

Morris: Did members of the legislature ever come to the Attorney General's office and discuss some of these issues on tax legislation?

Kragen: Oh, yes. Once in a while, when they had something which they thought the Attorney General would get involved with, they would come.

Also, while Warren was Attorney General, he was the leading Republican. We had a Democratic governor, and so frequently, when there was a political battle, the Republican legislators would come and talk to him about it.

Morris: Not necessarily on tax matters or--

Kragen: No, on anything. Anything they thought they might be-- because he was, really, the hope of the Republican party in California at the time.

Morris: Because he was Attorney General?

Kragen: No, because he was the only Republican in state office who got elected. That is, not the only one. The secretary of state was Frank Jordan, and Gus Johnson was the treasurer, and they were both Republicans, but they really didn't count in the overall picture.

Morris: How come?

Kragen: They weren't important offices. They were people who'd been elected many times, and just routine. Here Warren had carried--in a tough fight. The other two hadn't had election fights, you see, and they weren't leaders.

Morris: But they had both been in office a considerable length of time.

- Kragen: For a long time, yes.
- Morris: Why didn't anybody challenge them? In view of the fact that people have used both these offices--
- Kragen: Yes, but nobody ever used them in those days. The treasurer's office really should have been abolished, as it still should, and the secretary of state's office was a minor office. It really did very little. And these were people who just were satisfied to let it go along on its own way. They weren't using it as political stepping stones. [Laughs.]
- Morris: It's interesting how things change over the years.
- Kragen: Yes, that's right. Sure.
- Morris: We've picked up a couple of comments that there were some questions on the legality of the handling of state banking by the treasurer's office. Did this ever come to you?
- Kragen: It didn't come to me, but in that period, it was sort of a "Who's my friend?" system, and there were a lot of questions, but I didn't have anything to do with them, and I don't know anything about them.
- Morris: Would this be because of the state of the art, or--
- Kragen: No. As I understood it, purely by rumor, under the constitution, Johnson had complete control of where he put the funds.

World War II Begins: Civil Defense and Japanese Location

- Morris: You said that the legislators would come to Warren on questions they had about dealing with Olson. How did this shape up? What were the primary issues?
- Kragen: There were all sorts of issues. I can't remember specifically what the issues were--because I really wasn't involved with that, but we had an awful lot of issues with Olson as to the way he handled things, and the way Warren and the Republicans generally thought they should be handled. The only things I got involved with Olson were when Warren had us go up to meet with Olson on some opinions we wrote on sales tax on planes sold to the British government--this was during the war--

- Kragen: so we went up--but never did see Olson. In fact, we walked out on him, because he kept us waiting, and we said we didn't have to wait for that guy. [Laughs.]
- Morris: Oh, dear.
- Kragen: There was no love lost between Warren and Olson. At all. Warren--
- Morris: Was this as men who had a different view of life, or was it being of different political parties?
- Kragen: Well, I think Warren didn't think Olson was a very good governor. He didn't think what he was trying to do was right. He didn't think he was very competent. I don't know what Olson thought, because he was guarded by his staff so much that you really never got to him; but he fought with us all the way through. We had battles on every issue.
- Morris: Would he come to the AG's office?
- Kragen: Never. Never that I knew of. Warren saw him, but Warren very seldom went up there.
- Morris: Did Olson have cabinet meetings, or--?
- Kragen: No, the Attorney General, in those days, was not part of any cabinet. I don't know whether he is now or not. I think not.
- Morris: Well, he's elected--
- Kragen: Yes, but that's not the basis of a cabinet in the state system. The basis of a cabinet is what the governor wants. Each one has his own, and I don't think Olson had a cabinet, in the sense that Brown is trying to get a cabinet.
- Morris: As Governor, Warren functioned with a cabinet, didn't he?
- Kragen: Somewhat. I really can't be sure about that, but I didn't see much indication. I don't remember that he had regular meetings of the department heads. He had meetings, but I didn't know that it was a weekly meeting or anything like that. May have been, but I just didn't know it.
- Morris: The textbooks refer to the battle over who was going to run the state civil defense as one of the issues that may have shaped Warren's decision to run for Governor.

Kragen: That's right. There was a big battle over it. He considered the Attorney General should, and Olson thought that it was the Governor's job. And he had appointed somebody, who was--

Morris: Dick Graves?

Kragen: Yes. Who was supposed to do it, and it was a real-- Warren didn't think they knew what they were doing, and I think there was a big battle on that. I wasn't involved. I knew Dick pretty well.

I knew these people, but I didn't get involved in that end of it, largely because I wasn't much involved in matters related to the war that the Attorney General's office was doing, even though we were all assigned jobs during that period. I traveled a lot. And as a result, I didn't get many of the assignments related to the war.

Morris: Even more controversial than the civil defense was the Attorney General's office and the Japanese, when we actually got into the war.

Kragen: That really wasn't between the Governor's office, I don't think, and the Attorney General. It was very controversial, and it's never really been thoroughly cleared up, as far as I know, but my reaction--we were getting a lot of reports on sabotage, which proved later to be untrue, about Japanese sabotage in the Hawaiian Islands.

I remember the two or three meetings the Chief called to give us the details on reports he'd gotten. I think there got to be a certain amount of panic in that, and the decision was to avoid the problem by relocation. I think one of the problems was that it probably wasn't carefully thought out or researched as it probably should have been. But when you're in the middle of worrying about submarines off the coast, and everything else, you don't think as fast or as carefully as you might otherwise.

Morris: Were there questions at the time, in the beginning of 1942, as to what would happen to the property that was owned by the Japanese?

Kragen: No. Some people raised it, but that was one of the really bad things, I think. Nobody gave much consideration to that at all, as far as I could tell.

Morris: Nobody came to the AG's office to do anything about it?

Kragen: Well, I can't say nobody did. I never saw anything on that. I don't know whether they did or not, but I know what happened, and nobody protected the property at all, except some individuals did. In individual cases they did things; but there was no government--neither the legislature, nor the Governor, the Attorney General, nor anybody, as far as I know, did anything in that regard.

Morris: It's interesting, again, looking back on it, that nobody thought of this aspect of it.

Kragen: That's right. In fact, in the Los Angeles area, I was informed the blacks moved in and took over all the Japanese property at distressed prices. Really, they just took it over, many times without paying for it. But they were the ones--

Morris: Because the property was just left vacant?

Kragen: Yes. People were moved out fast, and nobody protected it.

Morris: Very curious thing altogether.

Kragen: That's right. It was a very sad situation, but there it was. I don't know whom you blame.

Morris: Yes, as you say, the whole issue seems never to have been thoroughly researched or cleared up.

IV 1942 CAMPAIGN FOR GOVERNOR

Warren Announces his Candidacy

Morris: Sitting there in the Attorney General's office, aware of all these things coming in and out, and being out in the counties, when did you get a sense that Warren would run for governor?

Kragen: We didn't think he was going to. He called a meeting-- there were rumors going around. Every place you went you heard, "Warren's going to run for governor."

Morris: About when would this have been?

Kragen: This was, say, March of 1942. I'm not actually certain, but around then. And he called a meeting of the staff, in San Francisco. And we sat down. And he said, "I know all these rumors are going around, that I'm going to run for Governor of the State of California. And it's caused a lot of uncertainty around this office. And I want you to know I'm not going to run."

Two weeks later, he called another meeting. And at that meeting he said, "Contrary to what I told you"-- I mean, this is not exact, but--"Contrary to what I told you, I have been convinced that the only way that we can save the State of California from the tremendous disaster which the continuance of the Olson administration would bring to the state, is for me to run.

"I don't want to run. I like this job, but I'm forced, as a citizen of this state, to accept the decision of others that it's the only way we can defeat Olson, and I'm running." That was it.

Morris: Any idea of who convinced him to run?

Kragen: I just don't know, but it was the Republican stalwarts,

Kragen: I'm sure. I'm sure he also relied heavily--this is surmise--on such men as Joe Knowland, Jesse Steinhart, that type of man, outside of the party organization as such. He had a group of those people whom he relied on; I think Joe Knowland and Jesse Steinhart more than any other two.

Morris: What was Mr. Steinhart's particular interest in-- ?

Kragen: Just a personal friend and advisor. He'd been one of Warren's closest advisors for many, many years.

Morris: Going back how far? This is something we never really--

Kragen: Well, I'm not sure. I would say that the two men who would probably know that better than anybody else are either Joe Feigenbaum or Jack Goldberg--they were with Jesse from early days. Joe Feigenbaum was in the legislature for a period, and knew Warren, and was close to the whole picture. They would know. I'm not sure how far back, you know.

My first experience with it was when I was with the Attorney General. I got to see Mr. Steinhart, whom I didn't know at all then, so I don't know how much before that.

Morris: They hadn't gone to law school together, had they?

Kragen: No, no. I think Jesse went to Hastings. He graduated before the school was other than a faculty of jurisprudence, which really didn't give a law degree. Jesse must have graduated about 1906 or 1908, somewhere around there. Maybe even before that.

Morris: So he was a shade older than Warren.

Kragen: Oh, yes. He was about five to eight, ten years older than Warren. I'm sure Jesse didn't graduate from here. [Reaches for book behind desk. Tape turned over.]

He graduated in 1917, and he was three years after Warren. No, I think Jesse didn't graduate--I don't know where Jesse went to school. He may have gone to Hastings, he may have gone to Harvard. I'm not sure.

Morris: But he maintained an interest in politics and public affairs?

- Kragen: Oh, yes. Till the day he died. Sure. Somebody said Jesse was a great guy at getting somebody else to run for office. [Laughter]
- Morris: Yes, what's the theory on that? There are a number of people who take this approach.
- Kragen: That's right. He never wanted--he always was someone who was interested, but never active in that sense of serving. Joe Feigenbaum said that he, himself, never would have run for office, except Jesse sort of pushed him into it. [Laughs.]
- Morris: Were they already partners?
- Kragen: He was in Jesse's office. I think he was an employee of Jesse's at that time. I'm not sure he was a partner then, but he may have been. I'm not sure.
- Morris: I see. In other words, was it Mr. Steinhart's theory that everybody should have a turn at this and become--
- Kragen: I don't know. I really don't know. I can't tell you.
- Morris: It's interesting. Were there other possible Republican candidates at that time?
- Kragen: Well, they really didn't have very much else. They had two or three people who didn't really add up to somebody who could win--[George J.] Hatfield, who was lieutenant governor for a while, and Brown, I think, Charlie Brown--what was his name?* No, it wasn't Charlie, it was some other first name. I can't remember his name. And, of course, Goodwin Knight was anxious.
- Morris: He was already a judge at that point, wasn't he?
- Kragen: He was a judge, but he wanted to be governor.
- Morris: That's interesting. Usually it works the other way around, doesn't it?
- Kragen: Yes, well, he was a superior court judge. He wanted to be governor. He was lieutenant governor under Warren for one or two terms--
- Morris: What about the man who ended up running for lieutenant governor in 1942? Fred Houser.

*A Charles Brown was elected to the state senate from Mono and Inyo Counties from 1939 to 1961. Ed.

Kragen: Yes, well, he was a judge, also. I don't think anybody thought he had enough strength, compared to Warren. Warren was well-known. Houser was really not well-known. Warren was, no question about it, the best-known Republican in the state.

Morris: Was Olson considered that strong a candidate to beat, or that strong a governor to beat?

Kragen: Well, he was governor. The Democrats would have had to go with him, and I don't know whether they thought anybody else could win, but they thought he was sure to win, and that's the way the politicians do.

Observations of the Campaign

Morris: Did you get involved in that campaign at all?

Kragen: Not really. We did a little bit. Warren's theory was that the people in the office should not get actively involved in the campaign, with one or two exceptions. He said, "You have a job to do, and I want it done. I don't want the fact there's a gubernatorial campaign to affect it."

He took two or three of the people from the office. I'm not sure how they did it, whether they went on leave, or what. Bill Sweigert worked quite closely on it, more than anybody else. But some of the other people--

Morris: How about Helen MacGregor?

Kragen: Well, Helen was his personal assistant, you know, and she went with him everywhere. She worked in the campaign in the sense that she did a lot of things for him, but I don't know exactly how much active campaigning Helen did, if any. I don't think it's her style.

Morris: No, I don't think so. I think she keeps the papers in order, and the schedules.

Kragen: Yes, that's right. I'm sure she did that during that time.

Morris: Did you ever sit down with Warren or Sweigert, or both, and talk about how things were going?

- Kragen: I did with Bill. Bill was a very close personal friend of mine. We used to sit down, have a drink, and talk about the campaign, and every once in a while we'd talk over a speech. Once or twice I saw material for a speech, where my field was involved, and made some suggestions, but I wasn't really actively involved in any sense.
- Morris: Was this Sweigert's first go at campaigning?
- Kragen: I really don't know. Bill had been a partner in a fairly active law firm, Cullinan, Hickey and Sweigert-- he was a Democrat, and I'm not sure how active they had been. I hadn't known Bill until--we went into the office at the same time, as deputies--
- Morris: Really?
- Kragen: Yes. I hadn't known him until then.
- Morris: But the two of you liked each other--
- Kragen: Yes, we get along. I saw him the other night at a real talky party. The Wollenbergs gave a dinner, and they had the Sweigerts, the Sherrys, and the Feigenbaums. I guess that was it. That was a real talkative group.
- Morris: Did you get back to the early days--
- Kragen: Sure. We'd all had Sacramento experiences, and we'd all been close to Warren, and we'd all been close to a lot of other political figures.
- Morris: Did your office have any contact with Wollenberg? He was then in the legislature, wasn't he? And from San Francisco?
- Kragen: Al was in the legislature--that was probably his first term.
- Morris: Because by 1945, he was--
- Kragen: Yes. He handled the Governor's program. See, he went into the legislature because Jesse Steinhart told him he ought to go into the legislature. We were talking about that the other night.
- Morris: Had he been in the firm?
- Kragen: No. He was just very close to the firm. He was practicing law on his own. I think he was by himself, or

Kragen: he was associated with somebody. He wasn't in the firm. But the Wollenberg family was very close to Jesse Steinhart.

Morris: Yes. Judge Wollenberg's father had been--

Kragen: Yes, Charlie. Charlie was then head of San Francisco social welfare, or maybe he was in the state service already.

Morris: Well, no. Warren appointed him as director of the State Department of Social Welfare.

Kragen: Yes, that's right. But Jesse told Al that he had better run, and that's how he happened to run.

Morris: Is his theory that you should try this while you are young?

Kragen: Yes, I think that's true. I think that would be true.

Morris: It's good experience in later life, in the law?

Kragen: Yes, it's a good thing. You gather good contacts and good experience. [Phone rings.] Pardon me. [Tape off briefly.]

Morris: Before we get past it, I was wondering if all your contacts out through the counties, on tax matters, provided any useful names or ideas that were worth feeding back into the campaign?

Kragen: No, we made no attempt to do that. I think Warren's idea was basically that if we did a good job, if we got around, saw the people, did a good job, that'd inure to his benefit.

When he came into a small town--once I was in Fresno, or one of those towns; anyway, I was trying a case, and I happened to see him.

Morris: He was in the same town on some other business?

Kragen: Campaigning.

Morris: Oh, I see. Wonderful.

Kragen: I think I was with Sweigert. I remember we watched him--he went down the street with a couple of the local people

Kragen: and they dropped into every store on the street. He said, "Hello," to the people working there. And, "I'm Earl Warren. I'm running for governor. Just want to meet you," and so on, and went right down the street. I remember that very distinctly.

That's the sort of thing he did. But he figured that--he never asked, never suggested, that we give him any names--at least, never suggested to me--or anything of that. He just told us to do our jobs, that's all.

Morris: He already knew people throughout the state?

Kragen: He knew them. And he had a great memory and a great rapport with them.

Morris: Did he have any paid campaign staff at that point?

Kragen: Oh, I'm sure he did. I just had no contact with anybody. I'm sure he must have, but I don't know.

Morris: Well, there's a recurring story that Clem Whitaker was on the staff for a while, and they came to a disagreement.

Kragen: That I have no knowledge of.

Morris: That story never came to you and Sweigert never unwound on that one?

Kragen: No, we never talked about it.

V CONTRAST IN STYLE: ATTORNEYS GENERAL ROBERT KENNY
AND EARL WARREN

- Morris: You said you did stay on in the Attorney General's office for a while, after Warren went on to Sacramento?
- Kragen: I stayed on for about a year, I guess. I stayed on until January 1944. So, about a year, with Bob Kenny.
- Morris: Yes. Any differences in Kenny's approach to--
- Kragen: Oh, yes. A lot of differences. Kenny was a different type of person. Where Warren would sit down and talk to people for long periods, and we'd never be able to see him because he over-stayed all the appointments, Kenny had them going in one door and coming out the other door laughing, and they thought they'd seen the Attorney General. [Laughs.]
- Morris: That's interesting.
- Kragen: He never really spent any time with anybody, to any extent. Kenny was much more interested in active participation in the matters in your own department. For example, in my department, as well as in all the others, we submitted all the briefs in the appellate courts to him before we sent them in. We had never done that with Warren, although he would want to see briefs on particularly important cases.
- Morris: I see. In other words, he really wanted to take a look before--
- Kragen: Yes. He read everything, supposedly. He was very fast. And he didn't spend as much time on some of the other things that Warren did. He really wasn't as interested in the general government picture as Warren was, and--
- Morris: But he was interested in the legal details?

Kragen: Oh, yes. He was a good lawyer. So was Warren, but he was--had come out of a little different set-up in relation to it. Kenny came off the bench, and he wanted to see what was happening in every phase of the operation.

Morris: Within the attorney general function.

Kragen: Yes. And controlled it more. I mean, he controlled it a great deal more.

Morris: That's an interesting distinction.

Watching Warren as Governor, what kind of things did you observe, particularly about his style as Governor?

Kragen: Well, he was about the same as when he was Attorney General. He was very open with the people, saw a lot of people, he talked to them, he was interested in them. His was, in contrast to Kenny, was a more formal type of operation. I mean you were never "one of the boys," really, with Warren, except when you went to a football game or something with him; Warren was a much more formal man.

Kenny was sort of--well, the typical thing, which sort of indicates the difference in nature: in the entire Warren administration, we never had a drink in the office, a cocktail or anything else. In the Kenny administration, the basic cocktail parties for Christmas and all that were in the office. He was a different type of man.

Morris: But at the same time, you say that Warren would sit down and talk.

Kragen: Oh, he was very friendly, a very gregarious sort of a fellow. Warren wasn't averse to taking a drink, but the office wasn't the place to have it, as far as he was concerned. It was a law office, and it should be run as a very formal law office.

Warren personally was very friendly. I mean, he always was that way. It used to bother me, after he became Chief Justice. When I'd go back there, I'd call Miss McHugh and tell her that I was in town. I just wanted to leave a message, to say, "Hello," to the Chief. And I'd get a call back, "Chief wants you to come over. See him for lunch," or "See him after court," or something. And I'd come over, and I knew how busy he was, and I was always sitting on the edge of the chair, and he was--I

Kragen: remember one time, specifically, I was there, and I'd been there about an hour or more, and I really felt-- I was enjoying it--

Morris: When the Supreme Court was in session?

Kragen: Yes, but after the court had adjourned for the day. I was very uncomfortable because I knew how busy he was, how much work the court had. And I said, "Chief, I think I'd better go and pack, go back to the hotel. I'm leaving this afternoon."

He said, "Where are you leaving from?"

I said, "Baltimore."

He said, "Well, what time is your plane?"

I told him. He said, "Oh, stay around a while. I'll have Dawson drive you back to the hotel and drive you to the airport."

So I stayed there for about two hours, enjoying-- he loved to talk to people from California, about the situation we'd known. He was that way, anyway.

He came here, I remember, for a couple of functions with students that were really far above and beyond what you would imagine a Chief Justice would do. That's the way he was in the Attorney General's office. He was always friendly. But he was awfully tough.

Morris: On people working for him?

Kragen: Yes. If you made mistakes, he would really tear you apart. If something went wrong.

If you took a position contrary to his, you could argue with him. He would never be a problem there, but once he decided a thing was going to be done in a certain way, you had to stop arguing, number one, and you had to not say anything outside. If you said anything outside about your disagreement with the Chief, you were through. He was really very tough.

Morris: Did this happen very often?

Kragen: Not very often. It happened, I think, oftener--from what they tell me--in the DA's office than it did in the

- Kragen: Attorney General's office, largely because the Attorney General's job was so much bigger.
- Morris: It was harder to keep tabs on everything.
- Kragen: Yes, that's right. But they told me it happened in the District Attorney's office a lot, but I never personally experienced it.
- Morris: That's interesting. You stayed around the AG's office for another year, and did you keep contact with Mr. Warren while he was Governor?
- Kragen: Yes. Because, first, I was in Sacramento a lot.
- Morris: Was that when you joined the Steinhart firm?
- Kragen: No, I didn't join the Steinhart firm until a couple of years ago.* No, I was in Sacramento a lot during that year, for my regular job for the Attorney General, and Warren had taken a lot of our staff up with him. Bill Sweigert was there, Helen MacGregor was there, one of my--
- Morris: Warren Olney?
- Kragen: Warren Olney was there. He wasn't in the Governor's office. He was with the Attorney General, handling a big case in Sacramento for a lot of that year.
- Morris: Yes, I believe he kept trying to go back to his own law firm, and he never made it for very long.
- Kragen: Yes. And then he went back to Washington, when the Chief went to Washington. But a lot of those people were in the Governor's office--so I used to go in and see them. Then, around the middle of the year, I was assigned to write the memos for the Chief on the tax legislation, so I saw a lot of him then and had a number of conferences with him. I saw quite a bit of him over the year.

*Feigenbaum, Steinhart, Goldberg and Ladar in San Francisco Ed.

VI LEGISLATIVE REPRESENTATIVE FOR THE MOTION PICTURE
AND OTHER INDUSTRIES

Employee Insurance Legislation

- Morris: And then, when you left the Attorney General's office--
- Kragen: I went to a Los Angeles law firm.
- Morris: You went to Los Angeles?
- Kragen: Yes. With a firm called Loeb and Loeb, which was then a fairly large--and is now--a fairly large law firm, which mainly represented the motion picture industry.
- Morris: Oh, that must have been quite a--
- Kragen: It was interesting.
- Morris: Were you able to keep in touch with Warren and the people that you knew in Sacramento?
- Kragen: Yes. Because one of my jobs was to represent the motion picture industry, and actually, all of industry, in Sacramento, as a technical expert on tax matters and unemployment insurance.
- Morris: Unemployment insurance, in the 'forties? That's interesting. Why--
- Kragen: The industrial lobby had always had somebody from the motion picture industry, supported by the motion picture industry, as their technical expert in matters of taxation and unemployment insurance, and that was my job.
- Morris: Now, what's the connection between the motion picture industry and unemployment insurance?

- Kragen: Because they have a big stake in it. They had a multi-million dollar stake in the tax structure.
- Morris: This is the contribution of the employers to the unemployment fund?
- Kragen: The employer's contribution, sure. What we were trying to do was to try to keep that as low as possible, and so they made their contribution to the Sacramento representation by paying my retainer.
- Morris: I see. Well, then that means I can ask you if you got involved at all in various legislative discussions as to whether or not the state should require health insurance of employers.
- Kragen: Yes, very much so. We were much against it.
- Morris: As an employer representative?
- Kragen: Yes. For our group. We fought it; we fought the battle all the way through on it. Of course, I was not in on that at the beginning. Originally that was introduced in Warren's first term.
- Morris: The first battle was in 1945.
- Kragen: I was still with the AG's office then.
- Morris: There was another battle in 1947.
- Kragen: Well, the big battle in 1947 was in disability insurance, not in health insurance. Really, health insurance went by the board very fast. It was in the hopper in 1945, but it didn't last. I mean, it really was a battle, but the CMA and a lot of industry representatives opposed this legislation and it failed of passage.
- Morris: That's true.
- Kragen: But disability insurance they did get in 1947. And I was right in the middle of that one. In fact, I thought we had it licked. We were against it, and I thought we had it licked and told Mary Ellen that the session was over--
- Morris: Is this Mary Ellen Leary?
- Kragen: Mary Ellen Leary. She wasn't married then. She was political editor of the San Francisco News then. And

Kragen: she wrote up all that stuff. She was writing me up a lot, unfortunately. And I told her the session was over, and the next day--it was three days before the end--somebody introduced it as an amendment to another bill, and it [whistles] breezed through. Our guys missed it.

Morris: You got outflanked.

Kragen: All of a sudden they had disability insurance.

Morris: Did this cause you any qualms, knowing Warren had introduced this kind of legislation?

Kragen: No, I was a lawyer. I was fighting a battle for a client. And no matter what I believe, it doesn't make any difference. I didn't think those health insurance bills were very good, as a matter of fact. I thought they were really not very good bills, even though health insurance might be a good idea. I just didn't think the bills were very good bills. They were going to be terribly costly, and I really didn't think they were going to do the job.

But no, I'm a lawyer, representing a client. I fight the battle. As long as it's legal.

Morris: That must have brought you in contact with the labor federation and their--

Kragen: Oh, yes. Charlie Scully and Neil Haggerty. We were with them all the time. We were good friends. I mean, Charlie and Neil and I were very good friends, but we were battling them all the time.

Morris: How about the unions related to the motion picture industry? They were pretty outspoken in those days, weren't they?

Kragen: Oh, they sure were. They wrote a letter to the presidents of all the companies at one time, and said unless I quit trying to get a certain measure--I can't remember whether it was fighting or supporting a measure--they would call a strike against the industry. And the presidents knew me from nothing--some of them knew me, but most of them, like Spiro Skouras, I'll never forget, he rang Darryl Zanuck, and said, "Who's this 'Kragen?'"

Darryl Zanuck said, "I don't know. Let me find out."

Morris: You're kidding!

Kragen: I'd met Zanuck, but the man I worked with was Jack Codd, who was the controller of the studio.

Morris: I see.

Kragen: The unions were very outspoken. Also I had handled all the unemployment insurance cases that were involved in the big strike in the industry. And they'd file then for unemployment insurance under what they thought then was the law, and I won them all, and they were annoyed. I had a lot of contact with them.

Morris: Did the courts at that point hold that if you were out on strike, you were not entitled to unemployment insurance? You were voluntarily not working.

Kragen: That's right.

Morris: That's a point that has changed, hasn't it, over the years?

Kragen: No, not really. There have been changes on some phases, but on that basic question, it's still the same--if you're out on strike, you cannot get unemployment insurance benefits. The question is whether an individual who can't work, because he won't pass a picket line, but isn't involved in the strike, can get it. There've been some cases, I think--I haven't followed them very closely--on that.

Morris: What was Mary Ellen Leary writing you up about?

Kragen: Well, she--see, what we had was an agreement that I would speak for industry, and Mary Ellen got Jack Shelley to ask me whom I represented.

Morris: He was then in the legislature?

Kragen: He was in the senate, yes. So Jack asked me, and I said I'd tell him, and I furnished him the list of forty organizations that I represented.

Morris: Separately, or through an association or committee?

Kragen: Well, I represented them--I was speaking for them. He asked whom I spoke for. I wasn't paid by them--let me make that clear. The next day, Mary Ellen started a

Kragen: series of articles on "the lobbyist's lobbyist, the man behind the industrial lobby." And I didn't know-- I wasn't behind any--

Morris: That was you?

Kragen: It was me, but I wasn't behind anything. I was just a technician for them. So she wrote a series of articles on that, and then she wrote a number of articles from time to time on things I would do--because I was very closely involved with the legislature all the time. In the type of work I was doing, I was appearing before committees--I was up there full-time.

Morris: I can imagine.

Kragen: It was her job, and she wrote it up. Mary Ellen and I are very close friends.

Morris: She's a remarkable woman.

Kragen: Oh, yes. Our families travel a lot together, the Sherrys and the Kragens, so we're very close to each other.

Morris: You didn't, by any chance, save those clippings, did you?

Kragen: No. I don't save clippings.

Morris: Well, they may be in her papers in The Bancroft Library.

Contacts with Governor Warren

Morris: So that you were really there on the spot to watch Warren through all three terms as Governor?

Kragen: Let's see. When did he become--?

Morris: He was appointed Chief Justice in 1953.

Kragen: Not the last part. I came here to Boalt Hall in 1952, although I still went up to Sacramento because I was general counsel to the California Retailers. I still kept that when I came up here. So I went up there, and I saw the Chief.

I saw him a lot, anyway, you know. We were very

- Kragen: friendly. The only time he got mad at me was when I turned him down for a judgeship. I wouldn't take a judgeship.
- Morris: Why didn't you want to go on the bench?
- Kragen: A number of reasons. First, I couldn't afford it at that time, and secondly, I just never thought I'd be a good judge.
- Morris: You like taking sides?
- Kragen: Well, and I think I'd get bored sitting up there, listening to all these lawyers, some of whom are so bad.
- Morris: I see.
- Kragen: I've turned down judgeship offers about four times.
- Morris: If you were in the south in those years, maybe you could comment on what looked like the growth of opposition to Warren coming from the south in his second and third campaigns for Governor.
- Kragen: It came, actually, out of Kern and Orange counties, largely. And that was Tom Werdel, whom I knew also. You know, Tom was a football player here, and I knew Tom very well. Tom was up in the legislature for a while, and they centered on him as a likely candidate.

Warren lost a lot of support from the conservative part of the Republican party simply because he was not a hundred per cent in agreement on all Republican issues. That's all there is to it. Lots of times, if he thought the Democratic position was right, he'd go with that. Health insurance, you see, was anathema to the conservative part of the Republican party, and to a lot of the moderate Republicans also. [Laughs.] And to the conservative Democrats.

- Morris: Yes, that had a money side to it. The next one that's pointed to is that gas tax increase in 1947. Was the opposition based on the fact that it was going to cost the oil companies money?
- Kragen: Yes, it was the oil company opposition, basically. I don't know that it was Republican--maybe it was. I just didn't get involved--I saw the oil companies get involved and the auto clubs, and they of course had at

Kragen: that time mostly Republican management and directors, but I don't know. It didn't--

Morris: I think what I find interesting is that you list a couple of issues where you were on the other side professionally, and yet you continued to be friends, and then, there seem to have been a number of people who didn't get over being mad at him.

Kragen: Well, see, I never got mad at him. I don't think he ever really got mad at me. I was in that office lots of times, arguing with him on issues presenting a position of our clients that we thought he was wrong on, and--

Morris: You'd go into the Governor's office, and--

Kragen: I was one of a group, but usually, if there was legislation, I was pointing out the technical nature of our position.

Morris: You'd send a delegation in?

Kragen: Yes, we dealt with a group of people. The lobbyists, or some of the principals once in a while, but mostly the lobbyists for the business interests--Charlie Stevens for the oil people, and Kugler for the insurance people, and often the CMA [California Medical Association] used to go in with us, and Kennedy from the retailers, also Agnew. I don't know, a whole group of people that we went in with. We went in usually as a group.

Morris: That's interesting.

Kragen: And argued with them, and presented the position of the industrial people on it. We went in lots of times with him, and I never saw--I didn't think he got mad. I don't know, maybe he did sometimes get mad. I didn't know it. He was always friendly to me, all the times we met.

I remember one of the sort of thrills I had, there was--I can't remember the function, but it was a big dinner, several hundred people, and he came in with a group--he was the principal speaker. He was being honored.

He came in, and I was standing up applauding. Everybody was standing up, and he veered off and came by and said, "Adrian, I haven't seen you for a long time. How are you?" and went on.

Morris: Oh, wonderful.

Kragen: And you know, it was a great thrill. And that's the way he was. I don't remember how many people close to him were there, but they were certainly not at my table.

VII THE CHIEF JUSTICE'S LAW CLERKS

Kragen: And you know, when he became Chief Justice, I picked his law clerk for ten years, one of his three law clerks.

Morris: Tell me how that works. This was the ones from the West Coast?

Kragen: The West Coast, yes. He asked me, when he became Chief Justice, if I'd screen the people from the four western schools--Cal, UCLA, Stanford and USC--and recommend a law clerk each year to him.

I felt there would be criticism if his old school was the only one involved, so I asked Sam Thurman from Stanford to join with me. We interviewed, and then went ahead and made a recommendation each year to him. Every year he took our recommendation. I did it for ten years. By then, Mike Heyman and Henry Steinman, who were former law clerks of his, had come out here, so I suggested to Warren that it might be a good idea for these younger men to take it over, and that's what they did. Until he resigned, they did it.

Morris: Had you helped to screen Heyman and Steinman?

Kragen: Heyman was from the East, from Yale. Steinman, I think we did. Steinman was from UCLA, and we sent Steinman to the Court. I think we have four or five of his law clerks here at the law school now.

Morris: I'm not too clear about this. The Chief Justice has three law clerks?

Kragen: Yes. He now has six, or nine. I don't know what it is now.

Morris: And how long does each clerk serve?

Kragen: Usually one year. Sometimes they'd hold over one law

Kragen: clerk, and he'd serve two years. So he'd have some continuity with that. But normally, they're one-year appointments.

Morris: Where does this idea of law clerks come from? Is it written into a constitution somewhere?

Kragen: No. It's in the budget. They have the money, they do it. Superior courts are now getting some. It has been the custom for many years to have some research help (law clerks, basically) in most of the appellate courts. I have never checked to see how far back it went. Certainly since I started to law school.

There used to be fewer of them. For example, I remember the Supreme Court justices shared clerks early, when I first was practising--but now they each have one or more.

Morris: This applies to the state supreme court as well as the--

Kragen: State appellate court, state supreme court, all of them have it.

Morris: Did Warren have any guidelines or any ideas of what kind of a person he wanted?

Kragen: No, he wanted someone who was very competent, interested in the court, willing to work, and that's all he told us. We knew the Chief, and in our own selection process we made some guidelines of our own.

For example, I would not send him someone whom I thought would fight him and then talk afterwards. You get some very bright guys who have obnoxious egos, and if that ego was such that if they thought the Chief was wrong they'd talk about it, we wouldn't send the man, no matter how good he was. One of the eastern men he hired was just exactly that way. He's a big-shot professor now, but I've never forgiven him for--

Morris: Shooting off his mouth-- ?

Kragen: --his mouth about the Chief, and how wrong the Chief was on various things, and I thought you have to have loyalty in a position like this. That's the way I operate.

Morris: Is there a sense in which being appointed a law clerk is an honor and a recognition of a young guy's ability?

Kragen: Sure, it's a big honor. It really is a great honor. In fact, it's a basis for great opportunity, too, both in going into teaching and also going into a good law firm.

Morris: Yes, I can see that.

When did you hear about Warren being appointed Chief Justice? How did that come to you?

Kragen: I'm not quite certain. I think there was a rumor around, and then we just heard that it was going to be, that's all. I don't remember. I just don't remember exactly. I was here, and we had a rumor, and then we just heard that he was appointed, that's all.

Morris: He had announced that he wasn't going to run for a fourth term early in 1953, to give the party time to choose somebody else. That was the general gist of his announcement.

Kragen: Yes, that's right.

Morris: And did you "old buddies" ever have any talk about--

Kragen: I don't remember that we had any special--I don't think we certainly made any campaign--I mean, the group of us.

Morris: By then, there was a pretty sizable group of people who had worked with him and formed personal friendships; was there any speculation as to what he would do with himself, when he left the Governor's office, before this--

Kragen: We may have. I can't really remember. I formed a group called "the ex-deputy attorneys general, Earl Warren chapter," or something like that. We met at the state bar meetings, three or four times. Then the thing evaporated, because I didn't have the time to do it and nobody else did it. The Chief came, and we discussed all sorts of things, but I can't remember any specific discussions. I don't know what speculation there was, as to what he would do or where he would go.

Morris: Or any concern about it?

Kragen: I'm going to have to--

- Morris: Yes, I know you have to get over to the City. We've covered just about everything. Would you like to add a few words as to your overall opinions of what Warren did or did not accomplish, and what he's meant?
- Kragen: Okay, fine. I think he was a great man. Very much--
- Morris: You certainly have been instrumental in organizing projects in his honor.
- Kragen: I've been interested in it for a long time. I think he's a great man. And it was a great experience for me. That was the thing. The man was very important in my career.
- Morris: In terms of the people you met, and the ideas--
- Kragen: Well, the people I met, and the opportunities he gave me.
- Morris: And as you said earlier, let you do--
- Kragen: Yes. I mean, I had experiences that no young man normally has.
- Morris: How old were you when you went into the office?
- Kragen: Let's see. I went in in 1940, so I was thirty-three years old.
- Morris: That's quite a job for a young man.

VIII A NOTE ON NINA (MRS. EARL) WARREN

Morris: Thank you so much for sharing your recollections with us. You've added valuable insights on working with Mr. Warren.

His death really has been a personal sadness to those of us who have worked on these interviews.

Kragen: Yes. I just wrote a letter to Mrs. Warren yesterday.

Morris: How's she doing?

Kragen: She's doing fairly well. John Daly said she was doing better now and she's coming out of it. She wouldn't leave the hotel there, and didn't want to do anything all this time.

Morris: She has stayed in Washington?

Kragen: She's in Washington and she's--you know, her life was Earl Warren. That's all there was to it.

Morris: Yes. It certainly was.

Kragen: Buddy Dinner was telling me the other day about the times when Ben Swig used to hire a yacht and they'd get a week or so vacation; most of the time the Warrens would go--or they'd do a trip together to New Orleans, or something like that. Mrs. Warren personally washed all the shirts and everything every night.

She had to do everything for him on all the trips; she'd never send anything out at all. In fact, Buddy said she offered to do his stuff, too. She just subordinated her whole life, basically, to her husband.

Morris: It's a kind of devotion that's probably almost disappeared.

Kragen: Yes, that's right. It's very rare. But that's the way

- Kragen: I think of her. She was always there, but she never intruded--she was always backing him up, in effect. A really wonderful woman, but it's an awfully hard thing when you lose somebody--
- Morris: To lose the center of your life that way.
- Kragen: Yes, that's right.
- Morris: Is there any thought that she'll come back to California?
- Kragen: I don't know. There's no indication. I think Ben tried to get her, and Wally Lynn, to come out for Christmas. Actually, I think Wally called her when Ben hurt his shoulder and said, "Ben needs some help and some nursing. Why don't you come out and take the suite up there and help him?" And they couldn't get her to come.
- Morris: Poor lady.
- Kragen: Yes. But John Daly said she was coming along better.
- Morris: I'm glad to hear that.

Well, I won't keep you any longer; you have a luncheon appointment. Thank you again.

End of Interview

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Robert Gordon Sproul Oral History

Adrian A. Kragen

FRIENDLY RELATIONS WITH THE LAW SCHOOL

An Interview Conducted by
Suzanne Riess
in 1985

INTERVIEW HISTORY

Counsellor-at-law and professor of law Adrian Kragen graduated from the university in the first year of Sproul's presidency, 1931. He went on to law school, graduating in 1934, where he had an opportunity to observe Sproul's close connections with the school and its faculty. He then returned to teach in that faculty, and he is an informed and interesting link between law and the university.

Adrian Kragen joined the Boalt faculty in 1952 from a senior partnership in a major law firm in southern California. One has the impression, reading the oral history, that a man so positive about the Boalt Hall system, and the University of California at Berkeley, could not refuse whatever offer the university made--although Mr. Kragen does make the point that negotiating a salary in moving from practice to professoring is a practical piece of business that does not get overlooked in the move to the ivory towers!

Mr. Kragen was very agreeable to being interviewed, and his office was every bit the challenge to find that he led me to believe it would be. In the upper reaches of Boalt Hall, it housed an accumulation of law books and stuff. I feel free to call it "stuff" because the characteristic, jaunty frontispiece photograph of Kragen shows the evidence piled up behind him, at every angle.

Our oral history got off his desk, edited, in rapid order, and though brief it is a tightly drawn picture of Robert Gordon Sproul.

Suzanne Riess
Interviewer-Editor

December 1985
Regional Oral History Office
486 The Bancroft Library
University of California, Berkeley

BIOGRAPHICAL INFORMATION

(Please print or write clearly)

Your full name ADRIAN A. KRAKEN

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Father's full name SIMON KRAKEN

Birthplace SAN FRANCISCO

Occupation BUSINESSMAN

Mother's full name MINNIE HABLES

Birthplace SAN JOSE CAL

Occupation HOUSEWIFE

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Occupation(s) ATTORNEY AT LAW, DEPUTY ATTY GENERAL,
PROFESSOR OF LAW

Special interests or activities ATHLETICS, CHARITABLE ORGANIZATIONS,
UNIVERSITY ALUMNI ACTIVITIES, TEACHING

Sproul and the Law School Faculty

[Date of Interview: February 28, 1985. Interviewed in his office in Boalt Hall, UC, Berkeley]

- Kragen: I came here as a student, in 1927, with Campbell as president, William Wallace Campbell. And he was a very austere sort of guy. We had a couple of thousand in the class, so we didn't really get close to him. Whereas Sproul, as students we thought we knew him, and we liked him. He had, you know, that booming voice, and his attitude was such that I think that you didn't feel that he was-- as really Campbell was--somebody that was in another planet.
- Riess: Were there changes, having a new president, for you as students?
- Kragen: If there were, we really didn't notice them. I think he was much friendlier, a much more outgoing person, and for Big Game rallies and things, he was there, things of that sort. But as far as changes in other than the atmosphere, I don't think there were any.
- Riess: Did you go to university meetings when he would speak? Was he a speaker you just wouldn't miss?
- Kragen: We liked to hear him, I remember that, but whether university students were any different than they are now at missing university meetings, I can't remember. I went to quite a few of them, but I was working a lot, and a lot of times I had to miss things because of it.
- Riess: You went on to law school right after graduation. Was there any closer connection with him then?
- Kragen: No, not really, although he was always very friendly to the law faculty, I don't think we had any special relationship as students with him. I can't remember anything especially on that, except that

Kragen: the law people knew him well. They were close to him. People like Barbara Armstrong and Warren Ferrier were very close to Sproul.

Riess: That's interesting.

Kragen: Sproul was very interested in athletics. We had a small law school faculty, but the faculty was very interested in athletics.

Riess: Really?

Kragen: Oh, yes, sure. About six or eight of them--and we only had about twelve or fourteen on the faculty--always sat in the same place, back of the end zone, at every football game. I remember because I was assistant ticket manager for football and basketball and I worked and then I'd come in and sit behind the end zone for a couple of quarters before I had to go down to the bank and count the money. They were always there, a whole group; [James P.] McBaine and [William W., Jr.] Ferrier, [Dudley O.] McGovney. In fact, it was a group that Sproul relied on to some extent, I think. I felt that but I don't actually know it. They'd known him. Many of them, like Barbara Armstrong, had been here when he was an undergraduate.

Riess: Do you think it was mostly that connection that some of them had been classmates?

Kragen: Well, it was that, and for some reason because I found when I came that Sproul was very close to the law school. He did things to see that the law school grew in stature that he may not have done, I didn't know that he did, for other places.

Riess: How much do you think that his connection with Warren determined that?

Kragen: By that time, when Warren came in as governor, it was a very close relationship. But he and Sproul were very close always. I worked for Warren, so by that time, when I got to that stage, I got to see some of it, although I personally was not especially related to it.

Riess: I know that Warren was very generous, as a governor, to the university.

Kragen: Warren was very loyal to the university. I think Sproul helped, but you've got to see the background. In the days when Sproul was the university's lobbyist, Warren was around the legislature, part of

- Kragen: that time as DA, he was the leading DA in the state, and when the DAs wanted anything, he was up at the legislature. So he and Sproul, I think, were close in that regard, also.
- Riess: You're talking about the years before he was president, when he was comptroller?
- Kragen: Yes, when he was comptroller. He was the university lobbyist, and Warren, part of that time, was either DA or deputy DA. Part of the time, his early part, he was up in the legislature as a legislative clerk, or something. I don't remember what he did, but he was up there for a short period, working for the legislature.
- Riess: It would be interesting if people like Barbara Armstrong were giving Sproul advice that he was able to take back up to handle the legislators.
- Kragen: I can't say, I don't know, but I know that Barbara and he were quite close, and Roger Traynor, and others, were close to Sproul. I think Sproul relied to some extent on [John U., Jr.] Calkins, who was the university attorney in those days. He also taught in the law school; an awful teacher. We had one of the best faculties in the country, and he was not up to its standards. [laughs]
- Riess: And what was his field?
- Kragen: He taught civil procedures. So he was with the faculty, and I know that there were relationships where he called on the faculty for advice. I know it was so when I was here.
- Riess: That's very interesting. I have tackled the problem in these interviews of how Sproul was able to understand the fields that the men he was bringing in to teach were handling, like E.O. Lawrence and all the scientists, but I never talked to anybody in law. Maybe he had a lot of sympathy and understanding of law.
- Kragen: In those days, when he was up in the legislature, the legislature was largely farmers and lawyers, and I think he had a lot of contact with them. When he got back down here, I think the lawyers--. I think early when he was first here, there was no in-house staff. I don't know when John U. Calkins left his firm in San Francisco and came over here, but it was in the middle or late thirties at the earliest, because he was still in San Francisco when he was teaching when I was here.

Kragen: I think Sproul would have normally talked to the law faculty about things that he wanted to know, because he didn't have anybody right next to him, he had to go to San Francisco in effect. John U. Calkins and John Landon and some others were in San Francisco. They had a law firm. I think at that time it was Calkins, Hagar, and [R.H.] Linforth. Jerry Hagar. You know, Ella Hagar?

Riess: Yes.

Kragen: Ella's husband was originally in that, and then he came over here. But he was originally a member of the firm in San Francisco. And that firm were the attorneys for the regents.

Kragen, Law School, Class of 1934

Riess: Your undergraduate and your graduate years in the early thirties, the time of the depression, etc., did you belong to the Social Problems Club?

Kragen: No. I worked. [laughs] I had to eat. In '27, things were fairly good but I'd been working, I was older, and I had worked four years before I came to college.

Riess: Before you began as an undergraduate?

Kragen: Yes. I never graduated from high school. Under the system we used around those days, if you got a certain number of recommended grades, you could get in. Well, I had no recommended grades, and so I went to a prep school called Bates in San Francisco, and in one year got twenty-one units of recommended grades. And I came in. I was a little older. But I had very little money. So I worked fairly hard most of the time I was in this place. After my second year I was on scholarship and also was a reader.

Riess: It was that kind of work.

Kragen: That was the work then, but the first two years I was working fairly hard at all sorts of things, anything I could get to do. I washed glassware in the zoo lab, I cleaned out the Campus Theater and put up the marquee, I did anything that came up that I could make some money at. So I didn't have much free time, although I got involved in debating. I went out for track for a short time but it just didn't work, so I went out for debating, and I was in debating. When Garff Wilson was debating commissioner, I was debating

Kragen: manager, in my senior year. He lapped over. He was '30, '31. Until I became the debating manager, the debating manager got paid. As soon as I became debating manager, they decided not to pay them any more. [laughs]

Riess: It sounds like you were preparing for law school. Was that always your intention?

Kragen: No, I didn't intend to go to law school at all. But in my second year I was taking an overload in order to complete the requirements that Professor [Franklin C.] Palm said I had to have before he'd let me read his course, and that was the highest paying course on the campus for readers.

Riess: And what was that?

Kragen: History 145 and 146. In my sophomore year I took four four-unit courses, mostly history, but I wanted an easy two-unit course to add to them, and somebody said, "Oh, there's a course, Juris 10A-B." It was given by a fellow named Lynch, from Oakland, who was a lawyer. They said it was easy and to take it.

So I took it, but unfortunately, or fortunately actually, it was given that year by a young, new professor named Roger Traynor. And I got so enthusiastic about the course and Roger that I decided to go to law school. That's why, by the end of the second year, I had decided to go to law school.

Riess: That's a very good story. What was the status of Hastings back then?

Kragen: Hastings was basically, I guess, the school where people who wanted to work went. Because when I graduated I had to decide. I could get a job in San Francisco working for a law office after school. So I went to Roger Traynor, and I asked, "Roger, what should I do?"

Getting into Boalt was simple in those days, all you had to do was graduate from Cal, and I was a Phi Beta Kappa and summa cum laude and all the rest of that stuff, so I had no problem getting into Boalt. I told him I had a job if I went to San Francisco, and he said, "Go there, that's all right." Well, I went there for one year and I just hated it.

I ended up very high in the class, I think first or second, but I decided to come over here for my second and third year, because I disliked Hastings. I thought it was a fifth rate school. It had part time people who really, most of them, didn't care. A

Kragen: couple of them I thought were good, but they didn't care about it. And the students immediately after class rushed off. There was no interchange with the other people in the school. I just disliked it intensely.

You know, it met in a basement of the state building, its accommodations; the library used was the San Francisco Library, which was all right, but with no library of its own at all. The only thing it had were degrees from the University of California. [chuckles]

Riess: Did it feel connected to President Sproul?

Kragen: I saw no indication of it. I don't think they paid any attention to it. Except that I do think that the Hastings people came over to the graduation--in those days we had a big graduation. But other than that, I don't think there was any connection. I saw nothing.

Riess: And where was Boalt?

Kragen: Boalt was in what's now Durant Hall. The little square building next to California Hall?

Riess: Smack in the middle of campus.

Kragen: Oh, we were right in the middle of the campus, and it was a small building. As I remember it, we had two classrooms; one held 125 students, and one held seventy-five, which meant that after the end of the first year, fifty people had to go somewhere else, because you only had room for seventy-five. We graduated sixty-nine in my class. The classes graduated from sixty to seventy-five.

Nice small school, you knew everybody, you were on top of the faculty offices all the time, nobody could get away from anybody else. It was inadequate but it had--I don't think we thoroughly realized it, but since I came back to teaching and talked to the old-timers (then old-timers, people long gone now) about it, it was regarded as one of the best faculties in the country. But we were a small, provincial school. We didn't recruit outside. I don't think we had anybody out of the state in my class except an officer sent by the army.

Riess: I'm struck by how accessible you would have been, then, to the campus administration, which was in California Hall, wasn't it?

- Kragen: Yes, it was because I remember I got called up a couple of times before the dean, and that was on the first floor of California Hall. And Monroe Deutsch's office was there, so Sproul's was probably up on the second floor there. I don't remember ever being in Sproul's office as an undergraduate in law school, but it must have been there, because I remember very well being at the dean's office a few times for various things, and I guess he was called a provost then, Monroe Deutsch. Yes, they were right next door to each other.
- Riess: So anyway, the Social Problems Club is not something that you were in on.
- Kragen: No, I was not involved in it at all. We had our own little group of the Witkins, and the Weinbergers, and the others, who were their own social problems club. [laughs]
- Riess: What do you mean?
- Kragen: They didn't go out to the outer world, they argued among themselves all the time, and for part of the time I lived right near them. They lived on Union Street in a shack, a little cottage behind the lodging house I lived in. Day or night you could find Witkin, and Al Weinberger, and Henry Robinson, and the rest of them arguing.
- Riess: This was Bernie Witkin?
- Kragen: Bernie, yes.
- Riess: They were all students?
- Kragen: They were law students at that time. I was an undergraduate.
- Riess: And they were a little microcosm.
- Kragen: Oh, yes, they were. Any subject in the country, in the world, they would argue on.
- Riess: Sounds like we need to do a little more history of Boalt Hall. Really, you're very interesting on this subject.
- Kragen: Boalt's got a lot of things that happened over the years.
- Riess: Yes.

Sproul and Earl Warren

Riess: As an attorney have you ever represented the university on any issues?

Kragen: No, I've been involved as a hearing officer or something for the university on personnel grievances, and I represented one of the presidents individually on his tax problems, but I've never represented the university as such.

Riess: And not in the years that Sproul was president?

Kragen: No, not in the Sproul years at all.

Riess: Can you tell me more of an anecdotal nature of Sproul and Warren?

Kragen: They were both very outgoing people, and a couple of times, when I was at things where they were together, you would see them. They never vied against each other; they, I think, were very compatible, and it sort of dwarfed everything else when the two of them were together.

Sproul wasn't heavy, Warren was, but they were both quite big men. And Sproul had that tremendous voice of his, and Warren also, and I think from the times I observed them, they both had a very great interest in the university as such, and both had a very great interest in athletics at the university.

I mean, we went to football games with Warren, and he moved with the team, up and down that bench, and if you were on the aisle you were on the stairs. [laughs] Sproul was much the same way, he felt it very strongly. One of the big problems, I think, for Sproul--he made a couple of comments, and I can't remember exactly--was the fact that he had to at the UCLA games sit on both sides of the field. He did it, but his allegiance was here, and he had to keep it under cover in effect [chuckles] because there were so many problems with UCLA, and the feelings that UCLA had that they were being treated as second class citizens. He had to allay that. This little gesture which he had to make, I don't think he liked very much. But I don't remember anything special in the Warren-Sproul relationship.

Riess: Actually, the first thing you said is interesting, because you said that they were not competitive.

Kragen: I never saw any indication.

Riess: And yet the implication is that they might very well have been. They were the two most powerful men in the state.

Kragen: That's right, I didn't see any. For four and a half years I was with Warren, and then I was assigned in part to him when he became governor, to look over the tax legislation, and advise him on it. So, I was around a lot, and I saw Warren because our families knew each other. But I never saw any indication that he was competitive. They were both Republicans, they weren't running against each other at all. I think Sproul supported him in all the campaigns.

Riess: When Sproul came up to Sacramento, then, after he became president would he always see Warren, do you think? You mentioned in your oral history how amazingly accessible Warren was right up through the Supreme Court years.*

Kragen: Yes, sure. Warren, especially while on the Supreme Court, being away, he loved to see California people that he knew. The problem in the office in San Francisco and also in the governor's office was not that Warren didn't want to see everybody, but when he saw somebody who he'd known for years, or had some interest in things like the university, for example, he loved to talk to them about it. And his timing would go off and we in the office had much more trouble seeing him than the people outside, not because he didn't want to see us, but because his day was gone. We'd schedule a time, and by the time our time came he'd already gone two hours over his appointments, and so they shoved us elsewhere because he had other, outside appointments. So yes, he was very accessible, very easy to talk to when you got to see him, no problem at all. I never had any.

And after he got to Washington, and I'd go back, I'd usually phone the secretary and tell her I was in town and I'd like to say hello to the Chief, and she'd say, "He'd want to see you." She'd make a time for lunch, or to come over in the afternoon after court was over and see him, and I'd sit there and I'd be sort of on the edge of my chair because I felt I was taking too much of his time. I remember one day I said to him, "Look, I've got to go back to the hotel and pack and get the plane," and he said, "What time is your plane? Stick around, I'll have Benson" (who was his driver) "take you back to the hotel and drive you out to the airport." [laughs] So he was very available--and Sproul was much the same way.

Riess: That's what I wanted to know.

*Adrian Kragen, "State and Industry Interests in Taxation, and Observations of Earl Warren," an oral history conducted 1975 by Gabrielle Morris, in Earl Warren, Views and Episodes, Regional Oral History Office, The Bancroft Library, University of California, 1976.

Boalt Hall Faculty and the Loyalty Oath

- Kragen: After I came up here to teach in '52, I saw Sproul. Sproul said I was the only one whose voice was nearly as loud as his. I knew him quite well, got along very well with him. If anything came up that we wanted to talk to Sproul about, I know that [William L.] Prosser, the Boalt Hall dean--when I was first up here, there was a question about my situation, and I told him, "Look, it just isn't satisfactory."
- Riess: You told Prosser?
- Kragen: I told Prosser. And he immediately called Sproul, and Sproul immediately saw Prosser and took care of it. The law school--you know, those were the early days when the law school was not in the Academic Senate. Before I came here they'd gotten out of the Academic Senate over a battle of some sort, budget, I think. But then we were supposed to be subject to the budget committee, but every time there was a problem, Sproul took it on, got what the law school wanted. So they were very close.
- Riess: He and Prosser, particularly?
- Kragen: He and Prosser were close and he was very friendly to the law school people, generally.
- Riess: I guess he was on campus for another six years. You came right after the loyalty oath issue.
- Kragen: That's right.
- Riess: What are your observations about how Sproul survived, or didn't survive, that?
- Kragen: I think it was somewhat traumatic. I thought that by the time I got up here Sproul wasn't as completely in control as he'd been before. I think there were people who sniped at him who got some of his political opponents from time to time to work with them, John Francis Neylan and some of those. But it seemed to me that he certainly had the support of the faculty by the time I came up here. I couldn't see any faculty antagonism.
- Riess: How did Boalt stand as a group on the loyalty oath issue?
- Kragen: I was not here at all during that.

Riess: I know, but you would still hear about it. I mean, goodness, that whole thing still hasn't died in a way.

Kragen: Boalt was generally--I think a lot of the faculty were against the loyalty oath, but the faculty was advising. This faculty I think did most of the advising both of the president and of the Academic Senate on it. I think individual members.

Riess: That's interesting. I think of people like Joel Hildebrand and Benjamin Lehman and Stephen Pepper as the faculty who were on the main committees.

Kragen: Yes, but Jennings and others around here, my second hand information was that they were advising the faculties as to a lot of the processes. [Frank C.] Newman, and [Richard W.] Jennings, and [Edward L.] Barrett, and Prosser were, I think, advising the president to some extent. I know they were fairly active. They were sought after for advice on various aspects of the loyalty oath.

Riess: And it wasn't an issue that rent the place asunder?

Kragen: Not this place. When I came here I think this was as close a faculty, in personal feeling, as any law faculty in the country. Closer. In fact, when Prosser hired me one of the things he said was, "Our faculty is sort of uncommonly fond of each other." And it's true. When I came up here we had a small faculty, fourteen, sixteen of us, and we did everything together. We had a lot of social functions. We fought battles in faculty meetings on issues, and then everybody went out and had a drink together, or went someplace. In that period it was as close knit a faculty as you could find.

Riess: I would hypothesize that that's something lawyers have learned to do, to do their battle in one place--.

Kragen: That's right, but that's not true of faculties. UCLA, well, UCLA got so bad at one time that we had a joint meeting of the faculties-- Davis, UCLA, Berkeley, I guess, and Hastings--up at Davis. And various issues were being discussed, and on one issue, affirmative admissions I guess it was, I thought the UCLA people were going to fight each other. Really physically battle. And they had some very bad battles.

Right now at Harvard the battle is just so bad it's rending the school apart. I mean, law school faculties are not known as such to be compact groups.

Riess: So it was remarkable.

Kragen: Yes, it was. It was a very unusual situation.

Riess: You say that Sproul was the one who recruited you to come back?

Kragen: Prosser recruited me.

But the thing is, you see, that I was coming from the senior partnership in a major law firm and what Boalt could offer me here was one-fourth of what I was making down south. And to pay someone coming in, especially since they didn't take very often at Boalt people who were coming directly from practice, Prosser had to have the cooperation of Sproul, because what they did was to offer me the highest salary on the faculty, and an endowed chair and some other items in the future. And Sproul went along.

Then when I went up there something had happened and they didn't carry out everything they said. So I went to Prosser and I said, "Look, my firm wants me to come back, and I'm not very satisfied with the failure to keep your commitments." And that's when he went to Sproul, and Sproul right away got the regents--he had to go to the regents on it--and got it done. And that was true of a lot of other things I saw after I came up here.

Sproul Observed

Riess: Sproul was an amazing president.

- Kragen: He was. I remember some of the things that he did, and I think every faculty member who participated in this has the same story. In those days we had the freshmen reception, I don't know what happens now, but the law school faculty especially participated. We got all dressed up in our tuxes and we went to this thing. And we took a freshman student and brought the freshman student in, as I guess they maybe do it still, to President and Mrs. Sproul, Ida and Bob. And we'd introduce them: "This is Jane Smith from Porterville." He'd say, "Are you Myron Smith's daughter, or any relation? Graduated in the class of so and so." [laughs]

I think every faculty member who participated in that would tell a story just exactly like that. How he did it, I never will know. For three or years I went to this thing, and every time more

Kragen: than one of the people I escorted up to the president, he remembered some relative of theirs, or somebody from the same town that they would know. He just had a tremendous memory.

And you know, the way he did it, everybody felt that he was personally relating to you individually. The contrast, with all due regard to Clark and Kay, the contrast between the first year, because I did the first year of the freshmen reception when Clark was the president, it was just like night and day. Clark was trying very hard, was doing a fine job, but there wasn't that warmth, that feeling that really he was relating to each student.

Riess: Was there any arm twisting to get the law faculty to get into their tuxes and get out there and do it?

Kragen: We all did a lot of things that we thought that the president wanted to have us do. For example, we had that university meeting: a few of us from each school, I don't remember how many, but a number of us from each of the campuses gathered together at some place, Davis, or one of the schools here.

Riess: That was one of those All-University Faculty Conferences?

Kragen: That's right. The story was that if you were asked to go Sproul would be very hurt if you didn't go, so we all went when we were asked to go, when we were selected for a particular year. And the story was that Sproul wanted you to participate, and you should ask or comment at least once or twice during the meeting, and we all did. We all felt a sort of a--we weren't frightened of Sproul, or felt that he had, really, anything that he could do, except that we felt we wanted to support him.

Riess: That's interesting. And when you say "the story was," how was that?

Kragen: People who preceded you on your own faculty told you.

Riess: How about liaisons from Sproul to the campus?

Kragen: In the early days at the law school one of them was Vernon Smith who was our librarian, and was a Boalt graduate. Vernon was very close to the president. In fact, on any matters of fund raising-- you know, fund raising in those days was in Bob Sproul's pocket. He decided we needed money for a building that we couldn't get from the state, or money for something else, and he would call Vernon and Vernon and he would go see Steve Bechtel or Walter Haas, Sr., or someone else, and ask him for the money. Vernon was the one he called. He was very close to the president. He was, in a sense, a liaison.

Riess: That's a new name to me.

Kragen: Vernon's been dead a long time.

Riess: You're talking about the early fifties?

Kragen: When I came here in '52, and before, I'm sure. But when I came here, I know when Sproul wanted to go and talk to somebody he usually took Vernon along. And Vernon was close. Prosser was fairly close to Sproul, too.

Riess: And you think that he used Vernon Smith rather than going directly to Steve Bechtel himself?

Kragen: I think he used Vernon as sort of a fund raising legal advisor to be around to see to that phase of it. I don't know. I never spent any time talking to Vernon about that aspect. But I do know he did a lot.

Riess: When you came back, the people around President Sproul were Garff Wilson and Agnes Robb?

Kragen: Yes. And I knew Garff, as I've said.

Agnes Robb has always been friendly to the law school. She comes to quite a few of our functions and is a very good supporter of the law school and its programs. You know, when I came back here in 1952, I'd had nearly nine years dealing with the motion picture industry, and the presidents of the various studios, and getting through their secretaries to see Louis Mayer, and Sam Goldwyn, and Nick Schenck, and the rest of them. I'd had lots of experience, so Agnes Robb seemed a very friendly, easy person to work with, compared to Ida Koverman, or some of the other secretaries.

Riess: What do you think were Sproul's strengths and perhaps weaknesses?

Kragen: I think his greatest strength was his ability to command respect and attention from those people who were interested in education in the state. He really was able to inspire people to feel the university was the most important thing in the state of California. I have said that if Sproul had been president when we had our free speech controversy, the first time that they gathered on Sproul steps, Sproul would have come out and in his booming voice would have said [imitating President Sproul's voice], "What's the trouble, boys and girls?"

Kragen: And when they told him that the university wouldn't talk to them, he'd say, "Come on into my office," and that would have ended the the thing.

Riess: Do you really think in the sixties that kind of paternalism would have worked.

Kragen: I think it would have worked. Look, how do I know? Of course, I was in the middle of it, and I'd just gotten out of the administration when this thing started, but I was still liaison for various things. I did most of the speaking throughout the state for the administration on the problems, so I saw a lot, and I just think Sproul would have taken care of it. I think one of our problems was that we really didn't know how to communicate, and Sproul did. He was a great communicator.

I don't know what his weaknesses were, I didn't see a lot of weaknesses. One may have been that, a little bit like Joe Kapp [football coach], he couldn't see how anybody could say anything bad about the university. Maybe he was a little too aggressive on behalf of the university for some people. I don't know. He was certainly not a scholar, from that aspect. We'd had a scholar before. William Wallace Campbell was a scholar. Sproul was a very smart administrator. I think he was so wrapped up in the university that I think toward the last few years he didn't realize we'd grown as big as we had. Some of the problems he had in those last few years I think came with that fact.

Riess: Did you ever go on any of the alumni tours with him?

Kragen: You mean those junkets? No, I never went on those. I did a lot of speaking. I filled in once or twice in the area here for something, as part of one of those tours, but I never went on the tour.

Riess: Who do you think was in his innermost circle of relied-upon friends?

Kragen: I think he was very close to Warren, I think he was very close to Walter Haas. I think he was close to Steve Bechtel. Let's see, who else can I think of? I really am not sure who was. Whenever you saw him it was the people he was with, he was always so friendly. [laughs]

Riess: I don't know, you always kind of wonder, a man like that, when he really does let down.

Kragen: That's right.

Riess: Is it only when his eyes are closed, and he's asleep?

Kragen: That's right, they're running all the time, in a sense. He was active. He was on stage all the time. Luckily, Ida was a sort of a calming influence.

Riess: On stage all the time. How do you mean that?

Kragen: Well, I mean I think you are. You can't--.

Riess: You mean he was visible all the time?

Kragen: He was visible, and you have to know that you have to create a certain impression. You can't really let down. You have to create the impression, and you really don't know whether if the opportunity was there and you didn't have to do that you'd be different. I don't know, you don't know whether people like that who are always before their publics, whatever they are, are different at home at night, alone.

I've been in the President's House numerous times for parties, and some of them not too large, but he seemed always the same. He didn't seem different at those times than he was in the public gatherings.

Riess: Good, good point. Well, I'm delighted to have talked with you.

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